91-1260

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

LAC D'AMIANTE DU QUEBEC, LTEE,

Petitioner,

v.

STANLEY STANEK and ROBERT LINDHOLM,

Respondents.

Petition For Writ Of Certiorari
To The District Court Of Appeals
Of The State Of Minnesota, Fourth District

PETITION FOR WRIT OF CERTIORARI

MYRON J. BROMBERG, Esq.
Counsel of Record

ROY A. COHEN, Esq.
CYNTHIA D. RICHARDSON, Esq.
On the Brief

PORZIO, BROMBERG & NEWMAN, P.C.
163 Madison Avenue
Morristown, New Jersey 07962-1997
Telephone: (201) 538-4006
Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. May the Minnesota courts intentionally reject this Court's decision in *Asahi Metal Indus. v. Superior Court of California;* should their decision to do so be reviewed?

2. Does mere placement of raw material into the stream of commerce, with no further act or ability to control the destination of that material, constitute purposeful availment by a non-resident corporation of a forum in which an end-product that may contain the raw material as an ingredient is eventually sold?

3. May historic isolated direct contacts with a forum, which are unrelated to a cause of action, be considered sufficient to make a specific jurisdiction determination?

PARTIES

The parties to the proceeding in the Minnesota Court of Appeals were plaintiffs Stanley Stanek and Robert Lindholm, in their individual capacities and on behalf of thirty-five plaintiffs in related personal injury cases pending in Koochiching County, Minnesota[1], and defendant Lac d'Amiante du Quebec, Ltee.

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[1] Plaintiffs in the related cases are: David M. Blacklund, Glen G. Bilyeau, Christopher N. Cantrell, Jr., Riley M. Dunn, Arthur Fehrman, Alvin J. Glennie, Leonard Gordon (deceased), William A. Grinsell, Graydon Grotberg, Lawrence A. Hams, John B. Harris, Henry M. Haugland, Vernon Hill, Oliver Horton, Delbert Kittelson, Elmer L. Kirk, Kenneth Krzoska, William Krzoska, Duane P. Lenth, Frank Lundquist, Lewis Marble, Wilfred McGregor, Jerome Reeve, Morris John Olson, Leo Prevost, Emil P. Santine, Marvin B. Richter, Cecil F. Smrstik, John Stone, Terry Taylor, Julius Urban, Lornie D. Vertina, Norman Wagness, Lewis Walls, Richard J. Williams.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 2

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

ARGUMENT 8

INTRODUCTION 8

POINT I CERTIORARI SHOULD BE GRANTED TO RESOLVE THE DISPUTE OVER WHAT CONSTITUTES PURPOSEFUL AVAILMENT IN A STREAM-OF-COMMERCE SETTING 12

A. Purposeful availment has never been based on anything other than each individual defendant's contacts with the forum 12

B. Foreseeability does not constitute purposeful availment and has never been regarded as a sufficient basis for the assertion of jurisdiction 19

TABLE OF CONTENTS – Continued

Page

POINT II CERTIORARI SHOULD BE GRANTED BECAUSE THE OPINIONS OF THE MINNESOTA COURTS, WHICH IGNORED THE DISTINCTIONS BETWEEN SPECIFIC AND GENERAL JURISDICTION, ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT 22

CONCLUSION 26

TABLE OF AUTHORITIES

Page

CASES

500 Motors, Inc. v. Superior Court, 176 Cal. Rptr. 349 (Cal. Ct. App. 1981) 9

Adolf v. A.P.I., Inc., 726 F. Supp. 764 (D.N.D. 1989) 11

Asahi Metal Indus. v. Superior Court of California, 480 U.S. 102 (1987) ..... *passim*

Bean Dredging Corp. v. Dredge Technology Corp., 744 F.2d 1081 (5th Cir. 1984) 9

Bond v. Octagon Process, Inc., 926 F.2d 1573 (11th Cir. 1991), *aff'g*, 745 F. Supp. 710 (M.D. Ga. 1990), *cert. denied*, ___ U.S. ___, 111 S. Ct. 2855 (1991) 8, 11

Bryant v. Ceat S.p.A., 406 So.2d 376 (Ala. 1981), *cert. denied*, 456 U.S. 944 (1982) 9

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 8, 15, 19, 20, 21

Burns v. District Court, 627 P.2d 403 (Nev. 1981) 10

Falkirk Mining Co. v. Japan Steel Works, Ltd., 906 F.2d 369 (8th Cir. 1990) 10, 12

Ford Motor Co. v. Atwood Vacuum Mach. Co., 392 So.2d 1305 (Fla.), *cert. denied*, 452 U.S. 901 (1981) 9

Graco, Inc. v. Kremlin, Inc., 558 F. Supp. 188 (N.D. Ill. 1982) 9

Gray v. American Radiator & Standard Sanitary Corp., 176 N.E.2d 761 (Ill. 1961) 19

Hanson v. Denckla, 357 U.S. 235 (1958) 16, 20

Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984) 22, 23, 24, 25

TABLE OF AUTHORITIES – Continued

Page

Irving v. Owens-Corning Fiberglas Corp., 864 F.2d 383 (5th Cir. 1989), *cert. denied*, (1989) 10

Olmsted County v. Trailer Equip. Warehouses, Inc., 421 N.W.2d 395 (Minn. Ct. App. 1988) 18

Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) 23, 24, 25

Rostad v. On-Deck, Inc., 372 N.W.2d 717 (Minn. 1985) 6, 17, 18

Rykoff-Sexton, Inc. v. American Appraisal Associates, Inc., 460 N.W.2d 78 (Minn. Ct. App. 1990), *rev'd on other grounds*, 469 N.W.2d 88 (Minn. 1991) 22

Shaffer v. Heitner, 433 U.S. 186 (1977) 16

Smith v. Dainichi Kinzodu Kogyo Co., 680 F. Supp. 847 (W.D. Tex. 1988) 9

St. Joe Paper Co. v. Superior Court, 175 Cal. Rptr. 94 (Cal. Ct. App. 1981), *cert. denied*, 455 U.S. 982 (1982) 9

Sturgill v. Chema Nord Delekkemi Nobel Ind., 687 F. Supp. 351 (S.D. Ohio 1988) 9

Suvada v. White Motor Co., 210 N.E.2d 182 (Ill. 1965) 19

Tomashevsky v. Komori Printing Machinery Co., 715 F. Supp. 1562 (S.D. Fla. 1989) 8

Tunnell v. Doelger and Kirsten, Inc., 405 F. Supp. 1338 (D. Minn. 1976) 23

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 8, 9, 13, 14

STATUTES

28 U.S.C. § 1257 2

TABLE OF AUTHORITIES – Continued

Page

Minn. Stat. § 543.19 (1991) 2, 4, 22

Minn. Stat. § 604.02 (1991) 19

OTHER AUTHORITIES

Black's Law Dictionary, 584 (5th Ed. 1979) 20

Maltz, *Unraveling the Conundrum of the Law of Personal Jurisdiction: A Comment on Asahi Metal Industry Co. v. Superior Court of California*, 1987 Duke L.J. 669 13

OPINIONS BELOW

The Minnesota District Court, County of Hennepin, Fourth Judicial District issued its Order and Memorandum denying Lac d'Amiante du Quebec, Ltee's Motions to Dismiss for lack of personal jurisdiction on February 25, 1991 in *Stanek v. A.P.I., Inc.*, No. 90-3349 (February 25, 1991), and *Lindholm v. A.P.I., Inc.*, No. 90-3350 (February 25, 1991) (annexed hereto as Exh. A, App. 1).[2] On that same day, the Minnesota District Court, County of Koochiching, Ninth Judicial District issued an Order and Memorandum denying Lac d'Amiante du Quebec, Ltee's Motion to Dismiss for lack of personal jurisdiction in *David Backlund v. A.P.I., Inc.*, No. 36-C-90-166 (February 25, 1991) (annexed hereto as Exh. C, App. 22), and deeming the order applicable to all related personal injury cases pending in Koochiching County, Minnesota.

The Court of Appeals of the State of Minnesota thereafter affirmed the District Court in *Stanek v. A.P.I., Inc.*, No. C8-91-453 (August 27, 1991), and *Lindholm v. A.P.I., Inc.*, No. CX-91-518 (August 27, 1991) (annexed hereto as Exh. D, App. 27).

The Supreme Court of Minnesota, which had discretionary jurisdiction to review the Court of Appeals' decision, denied Lac d'Amiante du Quebec, Ltee's Petition for Further Review without issuing an opinion. *Stanek v.*

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[2] The court relied on its prior decision in *Stenberg v. Amchem Products, Inc.*, No. 36-C-87-167 (August 25, 1989) (annexed hereto as Exh. B, App. 6).

A.P.I., Inc., No. C8-91-453 (October 31, 1991), and *Lindholm v. A.P.I., Inc.*, No. CX-91-518 (October 31, 1991), (annexed hereto as Exh. E, App. 43).

JURISDICTION

The decision for which petitioner seeks review was filed on August 27, 1991 by the Minnesota Court of Appeals. The Supreme Court of Minnesota denied discretionary review on October 31, 1991. This Court has jurisdiction to review the decision of the Court of Appeals of the State of Minnesota by writ of certiorari pursuant to 28 U.S.C. § 1257.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The due process clause of the fourteenth amendment provides:

> Section 1 . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

Minnesota Statute of Judicial Procedure § 543.19 (1991) provides in pertinent part:

> Subdivision 1. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any nonresident individual, or the individual's personal representative, in the same manner as if it were

a domestic corporation or the individual were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or nonresident individual:

* * *

(d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:

(1) Minnesota has no substantial interest in providing a forum; or

(2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or

(3) the cause of action lies in defamation or privacy.

* * *

Subd. 3. Only causes of action arising from acts enumerated in subdivision 1 may be asserted against a defendant in an action in which jurisdiction over the defendant is based upon this section.

STATEMENT OF THE CASE

Stanley Stanek and Robert Lindholm brought personal injury claims against thirty-three manufacturers and distributors of asbestos-containing products and five miners of raw asbestos fiber. They allege injuries resulting from exposure to asbestos-containing end-products

during their employment.[3] They claim that Lac d'Amiante du Quebec, Ltee (hereinafter "LAQ"), a mining company, is liable for their injuries because the end-products to which they were exposed allegedly contained LAQ's raw asbestos fiber as an ingredient. The complaints do *not* allege that respondents were ever employed in mining asbestos or manufacturing asbestos-containing products from asbestos fiber. (*See* Exh. F, App. 45; Exh. G, App. 63).

LAQ moved to dismiss the complaints against it for lack of personal jurisdiction, arguing that Minnesota could not assert jurisdiction over LAQ consistent with the due process clause of the fourteenth amendment and the Minnesota long-arm statute, Minn. Stat. § 543.19.[4]

Beginning in 1952 and throughout the relevant time period, LAQ was a Delaware corporation with its principal place of business in Black Lake, Province of Quebec, Canada. (Affidavit of Roland P. Gagnon, former Senior Vice President of Marketing, annexed hereto as Exh. H, App. 81) (hereinafter "Gagnon Aff."). LAQ has never manufactured, produced, sold or distributed any asbestos-containing end-products. Rather, LAQ only mined, milled and sold raw asbestos fiber in Quebec,

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[3] Mr. Stanek was employed as a pipefitter at various locations in Minnesota. (Stanek Compl., annexed hereto as Exh. F, App. 45, 50-51). Mr. Lindholm worked as an insulator in Minnesota. (Lindholm Compl., annexed hereto as Exh. G, App. 63, 68-69).

[4] The Minnesota long-arm statute is designed to "have the maximum extraterritorial effect allowed under the due process clause of the federal constitution." *Rostad v. On Deck, Inc.*, 372 N.W.2d 717, 719 (Minn.), *cert. denied*, 474 U.S. 1006 (1985).

Canada. All sales of LAQ's fiber were made F.O.B. Quebec, Canada. (Gagnon Aff., App. 82).

LAQ never had an office, agents, employees, property or bank accounts in Minnesota. It never advertised in any Minnesota media. It never owned or rented any warehouse or storage facility in Minnesota; nor has it maintained any books or records in the State. LAQ has never been listed in any telephone directory in the State of Minnesota, maintained telephones in the State, or had a Minnesota mailing address. It has not paid or been obligated to pay any taxes or fees in Minnesota. (Gagnon Aff., App. 82-83).

LAQ never engaged in any continuing course of business activity in the State of Minnesota; however, it did have limited, isolated contact with Minnesota which ceased more than fifteen years ago and is not related to the present matters. That contact consisted of: (1) isolated shipments of fiber to a Ruberoid plant in Minneapolis between 1959 and 1963; however, LAQ's only dealings were with Ruberoid's central purchasing office in New York and not with anyone in Minnesota; (2) limited contact with a sales representative in Minnesota in the mid-1960's which never resulted in any sales; and (3) correspondence with 3M Company in Minnesota five times between May of 1962 and November of 1964 and once each in 1970, 1974 and 1976. That correspondence did not result in any sales. (Gagnon Aff., App. 83-84). Thus, before 1959 and after 1963, LAQ neither sold nor shipped any of its fiber to anyone in Minnesota.

Respondents do not allege exposure to LAQ fiber shipped to the Ruberoid roofing material plant in Minneapolis between 1959 and 1963. (*See*, Exh. F, App. 45-62; Exh. G, App. 63-80). It is undisputed that LAQ's stale contacts with the State are not related to the present matters.

Applying a "stream-of-commerce" theory of personal jurisdiction, the Honorable Thomas H. Carey, Judge of the District Court, denied LAQ's motions on February 25, 1991,[5] finding that LAQ sold its fiber to manufacturers knowing that those manufacturers would sell their end-products throughout the United States. (Exh. A, App. 3). The trial court further held that due process requirements for the assertion of personal jurisdiction had to be weighed against plaintiffs' interest in securing a single forum in which to litigate their claims. (Exh. A, App. 3-5).

The Minnesota Court of Appeals affirmed the trial court decision on August 21, 1991. Addressing the application of Minnesota's long-arm statute, the court stated that " 'the permissibility of an attempted exercise of jurisdiction [under the long-arm statute] may be tested by analyzing whether it meets constitutional muster.' Accordingly, personal jurisdiction is proper in this case, where Minnesota workers sustained injuries in Minnesota, so long as the due process clause is satisfied." (Exh. D, App. 35) (*quoting, Rostad v. On-Deck*, 372 N.W.2d 717, 719 (Minn.), *cert. denied*, 474 U.S. 1006 (1985)).

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[5] The order governs the motions brought by LAQ in the *Stanek* and *Lindholm* cases, as well as in thirty-five related personal injury cases pending in Koochiching County, Minnesota. (Exh. C, App. 22).

In making its due process determination, the Court of Appeals specifically declined to follow the plurality opinion of this Court in *Asahi Metal Indus. v. Superior Court of California*, 480 U.S. 102 (1987). The Court of Appeals explained that "[f]ive justices . . . refused to join in . . . part of the opinion explicated by Justice O'Connor." (Exh. D, App. 38). The court therefore concluded that it was at liberty to adopt a broad interpretation of minimum contacts under a stream-of-commerce theory. (Exh. D, App. 38).

The Court of Appeals recognized that it was "unknown which of LAQ's sales reached Minnesota" through the stream of commerce. (Exh. D, App. 40). Nevertheless, the court inferred that LAQ's sales to large companies in other states or regions "suggest[s] contacts sufficient in nature and quality so that a reasonable inference may be drawn from the character of the business." (Exh. D, App. 40).

Finally, the Court of Appeals concluded that LAQ's historic, isolated direct contacts with the forum, which ended more than fifteen years prior to and were unrelated to respondents' causes of action, could be relied upon as a basis for its specific jurisdiction analysis. (Exh. D, App. 38-39).

The Minnesota Supreme Court denied LAQ's petition for discretionary review without issuing an opinion on October 31, 1991. (Exh. E, App. 43-44).

ARGUMENT

INTRODUCTION

Lower courts on both the federal and state level have been at loggerheads with regard to the application of the following "stream of commerce" language of *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980):

> The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

444 U.S. at 297-98.

Some courts have recognized that this language does not vitiate the import of *World-Wide* and subsequent cases which make clear that a non-resident defendant must engage in some activity by which it "purposefully avails itself of the privilege of conducting activities within the forum State," *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), before jurisdiction may be asserted. Accordingly, those courts have declined to assert jurisdiction over a non-resident corporation where the corporation's only contact with the forum arose from the mere placement of its product into the stream of commerce. *E.g.*, *Bond v. Octagon Process, Inc.*, 926 F.2d 1573 (11th Cir. 1991), *aff'g*, 745 F. Supp. 710 (M.D. Ga. 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 2855 (1991) (jurisdiction improper over manufacturer who shipped cleaning solvent to government depots which distributed solvent to various military bases); *Tomashevsky v. Komori Printing Machinery Co.*, 715 F. Supp. 1562 (S.D. Fla. 1989) (court declined to assert

jurisdiction over non-resident corporation which utilized a number of American distributors on a state-by-state basis; however, those distributors did not direct sales at forum); *Sturgill v. Chema Nord Delekkemi Nobel Indus.*, 687 F. Supp. 351 (S.D. Ohio 1988) (jurisdiction improper over ingredient supplier where foreign corporation regularly sold chemical and sent employees to various states, but not to the forum); *Smith v. Dainichi Kinzodu Kogyo Co.*, 680 F. Supp. 847 (W.D. Tex. 1988) (court refused to assert jurisdiction over foreign corporation that sold product to regional retailer which did not serve the forum state); *500 Motors, Inc. v. Superior Court*, 176 Cal. Rptr. 349 (Cal. Ct. App. 1981) (purposeful availment not established where automobile insurance was sold to plaintiff outside forum and plaintiff subsequently drove into forum).

Other courts, however, have interpreted the *dictum* in *World-Wide* to mean that companies which place their product into the stream of commerce may be subject to jurisdiction in *any* forum in which that product arrives. *E.g., Bean Dredging Corp. v. Dredge Technology Corp.*, 744 F.2d 1081 (5th Cir. 1984) (jurisdiction asserted over defendant whose component part was resold in forum); *Graco, Inc. v. Kremlin, Inc.*, 558 F. Supp. 188 (N.D. Ill. 1982) (corporation subject to jurisdiction where small amount of its paint was resold in forum); *Bryant v. Ceat S.p.A.*, 406 So.2d 376 (Ala. 1981), *cert. denied*, 456 U.S. 944 (1982) (jurisdiction asserted over tire manufacturer in forum in which tire resold); *St. Joe Paper Co. v. Superior Court*, 175 Cal. Rptr. 94 (Cal. Ct. App. 1981), *cert. denied*, 455 U.S. 982 (1982) (manufacturer who sold boxes outside forum state subject to jurisdiction in forum where boxes were later shipped); *Ford Motor Co. v. Atwood Vacuum Mach. Co.*, 392

So.2d 1305 (Fla.), *cert. denied*, 452 U.S. 901 (1981) (manufacturer of component part of car amenable to jurisdiction in forum where car was sold); *Burns v. District Court*, 627 P.2d 403 (Nev. 1981) (jurisdiction asserted against lessor of car where car was leased outside forum and where plaintiff took car to forum state and was injured in accident involving car).

This disarray strongly suggests that prior decisions of this Court offer no clear guidance on the issue of stream-of-commerce jurisdiction. Indeed, the conflict was recognized, but not resolved, by this Court in *Asahi Metal Indus. v. Superior Court of California*, 480 U.S. 102 (1987). To the contrary, the *Asahi* decision has fueled, rather than extinguished, the controversy among the lower courts. *Compare, Irving v. Owens-Corning Fiberglas Corp.*, 864 F.2d 383, 386 (5th Cir.), *cert. denied*, 493 U.S. 823 (1989) (because the splintered decision in *Asahi* "provides no clear guidance on this issue", the court continued to adopt a broad stream-of-commerce theory of jurisdiction), *with Falkirk Mining Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 375 (8th Cir. 1990) (applying the reasoning of the *Asahi* plurality, the court refused to assert jurisdiction over a foreign component-part supplier who knew that its component would be incorporated into end-product that could be installed in the forum state. "For all [defendant] knew, [its customer] could have installed [its product] at any number of locations in the United States").

Indeed, the turmoil which has ensued from *Asahi* is illustrated by the conflicting treatment of LAQ by two different courts under substantially similar factual circumstances. In the present matter, the Minnesota Court of Appeals specifically rejected the decision of the *Asahi*

plurality, holding that LAQ was subject to personal jurisdiction in Minnesota based upon a stream-of-commerce theory of jurisdiction. (Exh. D, App. 38). By contrast, the United States District Court for the District of North Dakota dismissed LAQ from actions pending in that jurisdiction based on the fact that LAQ's only contact with that forum derived from the placement of its fiber into the stream of commerce. *Adolf v. A.P.I., Inc.*, 726 F. Supp. 764 (D.N.D. 1989).[6]

The confusion among the lower courts, perpetuated by *Asahi*, requires that constitutional guidelines on the stream-of-commerce issue finally be established. The present matter provides an ideal opportunity for an authoritative rule of law to be developed.

In addition, as demonstrated above, the Minnesota Court of Appeals decided a federal question – the extent of due process limitations on a stream-of-commerce theory of jurisdiction – in a way that conflicts with decisions of federal courts of appeal. *E.g., Bond v. Octagon Process, Inc.*, 926 F.2d 1573 (11th Cir. 1991), *aff'g*, 745 F. Supp. 710

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[6] Plaintiffs in *Adolf v. A.P.I., Inc.*, 726 F. Supp. 764 (D.N.D. 1989), were pipefitters, boilermakers, millwrights and ironworkers who claimed injuries allegedly resulting from exposure to asbestos-containing products. *Id.* at 767. Plaintiff claimed that jurisdiction over LAQ was proper under a stream-of-commerce theory. The District Court disagreed with plaintiff and granted LAQ's motion to dismiss for lack of personal jurisdiction. The court explained that "the key to asserting personal jurisdiction is the quantity and the quality of the contacts between the defendant and the forum state. In the present case, such contacts are almost non-existent." *Id.* at 769 (citations omitted).

(M.D. Ga. 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 2855 (1991); *Falkirk Mining Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 375 (8th Cir. 1990).

Finally, the Court of Appeals included in its long-arm or "specific" jurisdiction analysis, consideration of LAQ's limited *past* contacts with the State which are unrelated to the present action. (Exh. D, App. 30, 38-39). Accordingly, the decision of the Minnesota court conflicts with prior decisions of this Court.[7]

POINT I

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE DISPUTE OVER WHAT CONSTITUTES PURPOSEFUL AVAILMENT IN A STREAM-OF-COMMERCE SETTING

A. Purposeful availment has never been based on anything other than each individual defendant's contacts with the forum

The *Asahi* Court unanimously agreed that the most critical element of the jurisdictional examination is "purposeful availment."[8] 480 U.S. at 112, 116, 122. The Court differed, however, concerning the extent to which that

[7] *See infra* Point II.

[8] The Brennan concurrence noted that the case presented the "rare" situation in which purposeful availment was insufficient to confer jurisdiction. 480 U.S. at 116 (Brennan, J., concurring). The Stevens concurrence recognized purposeful availment as the test for minimum contacts, but concluded that its application was "not necessary to the Court's decision." 480 U.S. at 121-122 (Stevens, J., concurring).

criterion can be satisfied in a stream-of-commerce situation by charging a component-part supplier with the direct actions of another corporation.

Through Justice O'Connor, a plurality of the Court announced that it would hold a party responsible only for its own direct actions. Thus, the plurality held that "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." 480 U.S. at 112.

This holding of the *Asahi* plurality might appear at first glance to reject the language in *World-Wide* which sanctions stream-of-commerce jurisdiction where a defendant "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."[9] Upon closer examination, however, the two opinions are compatible. The confusion only arises because the *World-Wide* Court made a single broad statement, in language which suggested a rule, without providing any text to that rule. The result is the emergence of widely varying interpretations by lower courts.

World-Wide's "stream-of-commerce" language reflected the Supreme Court's recognition of the need to prevent manufacturers from insulating themselves from the jurisdiction of a forum by acting through distributors or intermediaries. *World-Wide* thus sent out a message to

[9] *World Wide*, 444 U.S. at 297-98. *See, e.g.*, Maltz, *Unraveling the Conundrum of the Law of Personal Jurisdiction: A Comment on Asahi Metal Industry Co. v. Superior Court of California*, 1987 Duke L.J. 669, 682 ("*World Wide Volkswagen*'s dictum cannot be said to express the views of the majority of the Court").

corporations that intentional employment of indirect marketing to avoid jurisdiction was a fiction that would not be condoned by the Court. Nevertheless, the Court advised that due process would still require some actual, voluntary, and deliberate conduct by the corporation within the forum. *World-Wide*, 444 U.S. at 297.

The *Asahi* plurality provided content to the rule suggested in *World-Wide*, recognizing that there may be situations in which the conduct of a defendant whose product reached the forum through the stream-of-commerce would rise to the level of purposeful availment. 480 U.S. at 112. Examples of such conduct include:

> designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.

Id.[10]

[10] Justice Stevens, in his concurring opinion, determined that it was unnecessary to address purposeful availment in light of the Court's unanimous conclusion that the assertion of jurisdiction over Asahi would be unreasonable. 480 U.S. at 121-122 (Stevens, J., concurring). Nevertheless, Justice Stevens suggested, in *dictum*, that a purposeful availment determination should revolve around whether defendant was involved in a "regular course of dealing" in the forum. *Id.* at 122. According to Justice Stevens, factors to be considered in the analysis would include the magnitude of defendant's penetration of the forum's market and the value and character of the component

(Continued on following page)

The plurality view is consistent with due process mandates which require that jurisdiction over a particular defendant be based strictly upon that defendant's contacts with the forum, and not upon the actions of any other party. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). Purposeful availment can only "proximately result from actions by the defendant *himself*." *Id.* (emphasis in original).

The members of the court who joined in Justice Brennan's concurrence viewed a component part supplier as a link in a chain that can be charged with the actions of manufacturers down the chain, provided that the supplier is aware of the manufacturer's market. 480 U.S. at 117. "As long as a participant in this process is aware that the final product is being marketed in the forum State," the assertion of jurisdiction over that participant is justified. 480 U.S. at 116. This analysis permits one company's actions to be imputed to another for purposes of jurisdiction. Such a result is in derogation of prior decisions of this Court which have held that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits

(Continued from previous page)

part involved. *Id.* Although the specific test articulated by Justice Stevens differs from that of the *Asahi* plurality, it resembles the plurality opinion in that it requires some conduct on defendant's part in addition to the mere arrival of its product in the forum through the stream-of-commerce.

and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).[11]

The Minnesota Court of Appeals essentially adopted and expanded the analysis articulated by the Brennan concurrence in *Asahi*. For purposes of asserting long-arm jurisdiction, the only contact that LAQ had with Minnesota was its alleged knowledge that its fiber would be incorporated into an end-product by its customer, which would then be unilaterally distributed by its customer, or someone else, into other states, perhaps including Minnesota[12]. The Court of Appeals charged LAQ with responsibility for its customers' contacts with Minnesota. In so doing, the court did not, nor could it, determine that LAQ had "knowledge" that a product containing its fiber actually reached Minnesota; rather, the court concluded that "a reasonable inference may be drawn [that LAQ's fiber reached Minnesota] from the character of its business." (Exh. D, App. 40). Such imputed knowledge cannot be constitutionally interpreted as the conduct of activities within the forum.[13]

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[11] Justice Brennan himself has acknowledged that the assertion of jurisdiction under a stream-of-commerce theory may not satisfy the due process requirements of "minimum contacts" *Shaffer v. Heitner*, 433 U.S. 186, 223 (1977) (Brennan J., dissenting).

[12] *See infra* Point II.

[13] Indeed, the inference itself is flawed inasmuch as LAQ was only one of numerous suppliers to various manufacturers. The manufacturers unilaterally determined: (1) whose fiber would be incorporated into which end-product; and (2) where the end-product should be shipped.

In its analysis, the Minnesota Court of Appeals relied upon the Minnesota Supreme Court decision in *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717 (Minn.), *cert. denied*, 474 U.S. 1006 (1985), which adopted a stream-of-commerce theory of jurisdiction. The Court of Appeals determined that the Minnesota Supreme Court was not bound by *Asahi* because the latter was not a majority decision. (Exh. D, App. 38).

In fact, the Minnesota Supreme Court's decision in *Rostad* is not limited by even the plurality opinion in *Asahi*, because the *Rostad* case involved the flow of defendant's product through the stream-of-commerce via a direct distributorship.

Plaintiff in *Rostad* was a softball umpire who was injured by a bat weight manufactured by On-Deck. The weight flew from the end of a bat while a batter was warming up, striking plaintiff. On-Deck, a New Jersey corporation, moved to dismiss based on lack of personal jurisdiction.

Although On-Deck did not sell directly to the Minnesota market (i.e., it was not licensed in Minnesota and did not maintain an office, own property, or have an agent for service of process in Minnesota), it utilized a national distributor to sell its bat weight in all 50 states. It also had a marketing plan which focused on states such as Minnesota which had professional baseball teams that used its product. The weights "had been a popular product in Minnesota for a number of years." *Id.* at 719.

That type of activity was acknowledged by Justice O'Connor in *Asahi* as conduct which would rise to the level of purposeful availment. When a defendant designs

"the product for the market in the forum State, . . . or market[s] the product through a distributor who has agreed to serve as the sales agent in the forum State" that defendant may be said to have purposefully availed itself of the forum's market. 480 U.S. at 112. In *Rostad*, the most important factual finding was that defendant On-Deck not only knew that its product might end up in Minnesota, but took direct action to ensure that it did. *See Olmsted County v. Trailer Equip. Warehouses, Inc.*, 421 N.W.2d 395 (Minn. Ct. App. 1988).

By contrast, LAQ did not choose to send its fiber into Minnesota[14] and had no actual knowledge of the destination of end-products into which its fiber may have been incorporated. Rather, certain end-product manufacturers unilaterally sent their products into various states, perhaps including Minnesota. As noted by the Court of Appeals, it is not even clear that LAQ's fiber ever reached Minnesota as an ingredient in any of those products. (Exh. D, App. 40). Nevertheless, the court charged LAQ with constructive knowledge that its fiber would reach the forum, based on the fact that LAQ sold to large U.S. corporations. (Exh. D, App. 40). The court then translated LAQ's constructive knowledge into purposeful activity in the State of Minnesota.

Thus, the appellate court created a fiction through which it inferred activity by LAQ within the forum State

[14] Although LAQ did ship fiber into Minnesota more than twenty-five years ago, those shipments are not relevant to the present examination of stream-of-commerce jurisdiction, which is a specific jurisdiction concept. These historical contacts with the forum relate only to a general jurisdiction analysis. *See infra* Point II.

where there actually was no voluntary or deliberate conduct.[15] The court's theory is in direct conflict with due process mandates which clearly require that a court review the actions of *each* defendant to determine whether the standards for personal jurisdiction have been met. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

B. Foreseeability does not constitute purposeful availment and has never been regarded as a sufficient basis for the assertion of jurisdiction.

Although the Brennan concurrence in *Asahi* recognized "purposeful availment" as the test for minimum

[15] In support of this attenuated theory of personal jurisdiction, which profoundly distorts traditional due process mandates, the Minnesota courts asserted a policy interest in providing a single forum in which Minnesota residents could seek compensation from non-resident corporations. (Exh. A, App. 5; Exh. D, App. 41-42). That goal has essentially been accomplished, however, by Minnesota's adoption of strict product liability law. Minn. Stat. § 604.02, subd. 3 (1991). In a strict liability action, any of the corporate defendants along the distribution chain may be held liable for a plaintiff's injuries. A defendant who is required to recompense plaintiff may then seek indemnification from other companies. Accordingly, it is unnecessary to venture outside of constitutional limitations on the assertion of jurisdiction in order to satisfy the concerns articulated by the Minnesota courts. Significantly, the case in which the stream-of-commerce theory was born, *Gray v. American Radiator & Standard Sanitary Corp.*, 176 N.E.2d 761 (Ill. 1961), was decided several years prior to Illinois' adoption of strict liability. *See Suvada v. White Motor Co.*, 210 N.E.2d 182 (Ill. 1965).

contacts, 480 U.S. at 116, the opinion actually focused on foreseeability as the basis for jurisdiction: "As long as a participant in this process is aware that the final product is being marketed in the forum State," the assertion of jurisdiction over that participant is justified. *Id.*

In the context of a stream-of-commerce analysis, the difference between the term "awareness" and the term "foreseeability" becomes indistinguishable. *Black's Law Dictionary* defines "foreseeability" as "the ability to see or *know in advance;* hence the reasonable anticipation that harm or injury is a likely result of acts or omissions." *Black's Law Dictionary* 584 (5th ed. 1979) (emphasis added). The standard set by the concurrence provides that a defendant has purposefully availed itself of a forum's market if it possessed information which would enable it to "know in advance" that a product containing its component part was being sold in the forum. Regardless of which term is employed, neither involves or implies any purposeful activity within the forum by the ingredient supplier.

Thus, the conclusion of the Brennan concurrence is perplexing in that it merges two criteria, foreseeability and purposeful availment, which this Court consistently has articulated as two separate aspects of the jurisdictional analysis. Foreseeability alone has been uniformly rejected by this Court as a sufficient basis for the assertion of jurisdiction. It is not enough that the contact between the defendant and the forum is foreseeable; it must be purposeful. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Indeed, in the majority opinion authored by Justice Brennan in *Burger King*, he recognized that:

> [T]he constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. Although it has been argued that foreseeability of causing *injury* in another State should be sufficient to establish such contacts . . . the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction.

Burger King, 471 U.S. at 474 (citations omitted) (emphasis in original).

In its assertion of jurisdiction over LAQ, the Minnesota Court of Appeals went even further than Justice Brennan's *Asahi* concurrence. Justice Brennan based his determination that Asahi purposefully availed itself of the forum State's market on the finding that "[a]lthough Asahi did not design or control the system of distribution that carried its valve assemblies into California, Asahi was aware of the distribution system's operation, and it knew that it would benefit economically from the sale in California of products incorporating its components." 480 U.S. at 121. The Minnesota appellate court merely found that:

> LAQ was selling asbestos to companies (large U.S. corporations). This leads to the natural *inference* that the asbestos fiber was to be put into the nationwide stream of commerce through the marketing of one or more of those major corporations. It is also reasonable to *infer* that the asbestos reached Minnesota. . . .

(Exh. D, App. 37) (emphasis added).

The reasoning of the Court of Appeals illustrates perfectly the manner in which lower federal and state courts can manipulate, expand and even reject the standards presently set by this Court. Thus, the need for a definitive ruling on this issue, which sets appropriate constitutional limitations on the applicability of a stream-of-commerce theory of jurisdiction, is clear.

POINT II

CERTIORARI SHOULD BE GRANTED BECAUSE THE OPINIONS OF THE MINNESOTA COURTS, WHICH IGNORED THE DISTINCTIONS BETWEEN SPECIFIC AND GENERAL JURISDICTION, ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT

The concept of "specific" jurisdiction was developed by this Court in relation to due process limitations on the reach of long-arm statutes. Personal jurisdiction is "specific" where the cause of action arises from and is causally related to the defendant's purposeful contacts with the forum state. *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414 n.8 (1984). Thus, long-arm jurisdiction requires that there be some connection between the acts complained of and defendant's contact with the forum.

Indeed, that requirement is explicitly incorporated into Minnesota's long-arm statute which states that a "nexus" must exist between the events giving rise to a cause of action and the acts of a non-resident defendant. Minn. Stat. § 543.19, subd. 3 (1991). Failure to demonstrate that nexus is fatal to a finding of long-arm jurisdiction. *Rykoff-Sexton, Inc. v. American Appraisal Associates*, 460 N.W.2d 78 (Minn. Ct. App. 1990), *rev'd on other*

grounds, 469 N.W.2d 88 (Minn. 1991); *Tunnell v. Doelger and Kirsten, Inc.*, 405 F. Supp. 1338 (D. Minn. 1976).

Although LAQ had a few isolated contacts with Minnesota, which for the most part concluded more than twenty-five years ago[16], those contacts are unrelated to the present action and therefore do not support the assertion of specific, ~~or~~ long-arm, jurisdiction. Nevertheless, the Minnesota Court of Appeals, in considering whether the forum could assert long-arm jurisdiction over LAQ, included in the equation LAQ's limited *past* contacts with the State. (Exh. D, App. 38-39). Thus, the Minnesota Court of Appeals failed to acknowledge the distinction between the doctrines of "specific" and "general" jurisdiction, and the contacts applicable to each.

"General" jurisdiction is the assertion of jurisdiction over a defendant in an action "not arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. at 414 n.9. For general jurisdiction to apply to a corporation, its contacts with the forum state must be "continuous and systematic", such that it is present in the state. *Id.* at 416; *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1952). Further, general jurisdiction requires current contacts at the time that suit is initiated. *Perkins*, 342 U.S. at 448.

In *Helicopteros*, defendant's contacts with Texas, the forum state:

> consisted of sending its chief executive officer to Houston for a contract-negotiation session;

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[16] *See supra* pp. 4-5.

> accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter [in Texas] for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training.

Helicopteros, 466 U.S. at 416. Although those activities transpired over a seven year period and involved expenditures by the defendant in excess of four million dollars, this Court held that the contacts were not of a continuous and systematic nature and were therefore insufficient to satisfy the requirements of due process under the fourteenth amendment. *Id.*

By contrast, the following contacts between a state and a foreign corporation were held to be sufficient for the exercise of general jurisdiction in *Perkins:*

> the president and general manager of a Philippine mining corporation maintained an office in Ohio from which he conducted activities on behalf of the company. He kept company files and held directors' meetings in the office, carried on correspondence relating to the business, distributed salary checks drawn on two active Ohio bank accounts, engaged an Ohio bank to act as transfer agent, and supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines.

Helicopteros, 466 U.S. at 415, citing *Perkins*, 342 U.S. at 438. The *Perkins* Court concluded that the foreign corporation "ha[d] been carrying on in Ohio a continuous and systematic, but limited, part of its general business" which made the exercise of general jurisdiction over the foreign

corporation by an Ohio court "reasonable and just". *Perkins*, 342 U.S. at 438.

LAQ's old, direct contacts with the forum are significantly less than those in *Helicopteros* and do not even begin to approach those in *Perkins*. LAQ's minimal sales to Ruberoid plant in Minneapolis, Minnesota occurred between 1959 and 1963. (Gagnon Aff. ¶ 17a, App. 83-84). These shipments of asbestos fiber were made F.O.B. Black Lake, Quebec to Minneapolis, Minnesota, and all sales arrangements were made with Ruberoid's central purchasing office in New York. (Gagnon Aff. ¶¶ 4 and 17a, App. 82-84). Other than this isolated sale of fiber twenty-nine years ago, LAQ had no customers or other sales in Minnesota.[17] Thus, LAQ did not conduct any business of a systematic and continuous nature in Minnesota.

Moreover, the Minnesota Court of Appeals did not determine that LAQ engaged in a continuous course of business in the forum; nor did it conclude that LAQ was subject to the general jurisdiction of Minnesota. Rather, the court mistakenly considered LAQ's prior direct contacts, which were only relevant to a general jurisdiction analysis, in the context of its long-arm specific jurisdiction analysis. Accordingly, the decision of the State court is in conflict with this Court's clear standards for analyzing cases of personal jurisdiction.

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[17] LAQ's limited attempt to sell to another Minnesota company and the isolated use of a sales representative were completely unsuccessful. (Gagnon Aff. ¶ 17b-c, App. 84).

CONCLUSION

For the foregoing reasons, petitioner LAQ respectfully prays that this Court grant its Petition for Writ of Certiorari.

Respectfully submitted,

MYRON J. BROMBERG, ESQ.
Counsel of Record

ROY A. COHEN, ESQ.
CYNTHIA D. RICHARDSON, ESQ.
On the Brief

PORZIO, BROMBERG & NEWMAN, P.C.
163 Madison Avenue
Morristown, New Jersey 07962-1997
Telephone: (201) 538-4006
Attorneys for Petitioner

Dated: January 29, 1992

EXHIBIT A

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Stanley Stanek, File No. 90-3349
Plaintiff,
vs. (Filed Feb. 25, 1991)
A.P.I., Inc., et al.,
Defendants.

ORDER

Robert Lindholm, File No. 90-3350
Plaintiff,
vs.
A.P.I., Inc., et al.,
Defendants.

The above-entitled matters came on for hearing on the Special Term motion calendar before the Honorable Thomas H. Carey, Judge of District Court, on December 20, 1990, at the Hennepin County Government Center, Minneapolis, MN. David Thompson, Esq., appeared on behalf of plaintiffs. Mark Lee, Esq., and Elizabeth Geise, Esq., appeared on behalf of defendant Cassiar. Patricia Burke, Esq., appeared on behalf of defendant L.A.Q.

IT IS HEREBY ORDERED:

1. The motion of defendants Cassiar and L.A.Q. for dismissal of plaintiff's complaint against it for lack of personal jurisdiction is herein denied.

2. The attached Memorandum is made a part hereof.

BY THE COURT:

/s/ Thomas H. Carey
Thomas H. Carey
Judge of District Court

Dated: February 25, 1991

MEMORANDUM

The Court's position is set forth in the case of *Theresa C. Stenberg, as surviving spouse and Trustee for the Heirs of Duane A. Stenberg v. Amchem Products, Inc., et al.*, Ninth Judicial District, County of Koochiching, State of Minnesota, file number 36-C-87-167. The defendant has urged this Court to issue a jurisdictional order of dismissal on the basis of alleged factual distinction, as well as a request for reconsideration of the Court's position in Stenberg.

I am not persuaded to alter my position as previously set forth in the Stenberg case, and incorporate the Memorandum of Law contained therein, by reference, where pertinent to the facts and issues now before us.

The additional comments I would make herein are twofold. First, I think it necessary to dispel any inference that the defendant corporations only contact with the State was in the nature of "general knowledge that stream of commerce *might* take its product into [Minnesota]". [See *Olmstead County v. Trailer Equipment Warehouses, Inc.*,

421 Northwest 2nd 395 (1988) (emphasis furnished)] The facts of this case persuade the Court that the defendant had more than a simple general knowledge that its product might show up in Minnesota some day. This defendant, like other manufacturers and distributors of raw asbestos fiber, were an active participant in a national marketing scheme.

In other words, we are not dealing with the sale of a limited quantity of raw material to a local or regional manufacturer. Rather, we are talking about the marketing of mass quantities of raw materials to international manufacturers at a time all parties clearly knew that the end product would be distributed on a national basis in every State of the Union. In its letter memorandum, defendant L.A.Q. attempts to distinguish itself from the fact situation of the *Rostad* case wherein the Court stated, "A manufacturer who places its product in the stream of commerce in effort to serve, directly or indirectly, markets in a jurisdiction is subject to suit in that jurisdiction." [*Rostad v. On-Deck, Inc.*, 372 N.W.2d 717 (1985).] While the case before us is not a distributorship situation, it is one of indirect marketing in this jurisdiction, to say the least. Defendant has not asserted that it mined only a limited amount of its product, or sold only to local or regional manufacturers; rather, it is obvious that they mined, marketed, and sold their product to manufacturers, knowing full well that the end product was distributed in every State of the Union. Thus, I feel that they are clearly within the concepts of due process and the logic of the *Rostad* case.

Secondly, we must weigh the due process requirements and the Long-Arm Statute of Minnesota with a

realistic evaluation of the plaintiff's position. We are dealing here with individual plaintiffs who are facing a multitude of defendants in each of these cases. It is virtually impossible as a practical matter, and as a financial burden, to expect an individual plaintiff involved in this type of complex litigation to commence separate actions in several forums in order to secure their day in court. When weighing the interest on both sides of the lawsuit, that of plaintiffs and that of defendants, all of the equities come down on the side of the plaintiff and require that we provide a single forum so that the case may be heard. If we do not do so, plaintiffs will not have an opportunity to recover against certain defendants, and other defendants will certainly be blocked, as an equally practical matter, from securing indemnity and/or contribution. When weighing the reasonableness and fairness to the parties, we must, first of all, come to grips with the unequivocal and absolute necessity of providing a forum for dispute resolution of complex litigation and avoiding a multiplicity of suits in several states.

Thus, the unique characteristics and problems compel a finding of jurisdiction under the facts of these cases.

The unique facts of complex litigation, particularly the voluntary national marketing of the defendants and the possibility that plaintiffs may be left without any forum, adds new meaning to the stream of commerce theory of Justice Brennan. [See dissent, *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).]

If we apply the rationale of Justice Brennan's dissent and look closer at the "stream of commerce" theory, we

can see that there is a substantial distinction between those local companies that know they might end up in another state and those local companies that decide that they want to produce sufficient quantity of product, expend sufficient financial resources, and use their working force to literally make sure that they have an opportunity to compete on a national basis.

Secondly, there is an equally compelling distinction between a plaintiff who is asked to simply begin his lawsuit somewhere else and those asbestos plaintiffs that are told there is no single forum and they must litigate the same claim over and over again in several jurisdictions.

/s/ THC
T.H.C.

EXHIBIT B

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF KOOCHICHING
NINTH JUDICIAL DISTRICT

Theresa C. Stenberg, as surviving spouse and Trustee for the Heirs of Duane A. Stenberg,

Plaintiff,

vs.

Court File
36-C-87-167

AmChem Products, Inc.,
Armstrong World Industries (Delaware) Inc.,
A C & S, Inc.,
Asbestos Product Mfg. Corp.,
Asbestospray Corp.,
Atlas Turner, Inc.,
The Babcock & Wilcox Co.,
A.H. Bennett Co.,
Carey Canada, Inc.,
The Celotex Corp.,
Combustion Engineering, Inc.,
Crown Cork & Seal Co., Inc.,
Eagle-Picher Industries., Inc.,
Empire-Ace Insulation Mfg. Co.,
Fibreboard Corp.,
Flexitallic Gasket Co., Inc.,
Flintkote Co.,
GAF Corp.,
Garlock, Inc.,
H & A Construction Corp.,
The Jamar Co.,
Keene Corp.,
MacArthur Co.,

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

National Gypsum Co.,
Owens-Corning Fiberglas Corp.,
Owens-Illinois, Inc.,
Pfizer, Inc.,
Pittsburgh Corning Corp.,
Raymark Industries, Inc.,
J.W. Roberts, Ltd.,
Ryder Industries, Inc.,
Southern Textile Corp.,
Spraycraft Corp.,
C.E. Thurston & Sons, Inc.,
Turner Asbestos Fibres, Ltd.,
Turner & Newall FLC,
Union Carbide Corp.,
United States Gypsum Co.,
United States Mineral Products Co.,
W.R. Grace & Co.,

Defendants.

The above-entitled matter came on for hearing before the undersigned on July 24, 1989 at the Hennepin County Government Center in Minneapolis, Minnesota on the Defendant Empire-Ace Insulation Manufacturing Corporation's Motion for dismissal for lack of personal jurisdiction.

Empire-Ace was represented by its attorney Michael McNee. The Plaintiff appeared through her counsel, David Thompson.

Based upon all of the files, records and proceedings, and the arguments and briefs of counsel, the Court makes the following Findings of Facts, Conclusions of Law and Order:

FINDINGS OF FACT

The defendant Empire-Ace Insulation Manufacturing Corporation (Empire-Ace) has moved in four Minnesota personal injury / wrongful death asbestos cases for dismissal on the grounds that this court lacks jurisdiction over it.

Empire-Ace is a New York corporation with its principal place of business also in New York. For at least a ten-year period, Empire-Ace supplied raw asbestos fibers to a co-defendant in these cases, Combustion Engineering, and to that company's wholly-owned subsidiary, Refractory and Insulation Corporation (R&I), at plants located in Pennsylvania and Illinois. Empire-Ace itself is not licensed to do business in Minnesota; has not made direct sales to Minnesota customers; does not employ persons in Minnesota or have sales representative here; it does not own or rent property in Minnesota; nor does it maintain a stock of merchandise here; it has not directly advertised or solicited business in this state; nor does it have any of the other traditional indicia of presence within the State of Minnesota.

This defendant has, though, placed its product in the stream of commerce with the hope, expectation, and obvious foreseeability that it would reach virtually every state of the union. In these particular cases, the expectation was in fact realized and the defendant's product reached the Boise Cascade plant at International Falls, Minnesota. As a result, the plaintiff Gustav Holm, and plaintiffs' decedents Kenneth Swenson and Duane Stenberg were all exposed to asbestos fiber in Minnesota and presumably contracted the injury within this state. the

period of gestation occurred over many years as the plaintiffs remained residents and the ultimate injury occurred here when their individual injuries were diagnosed.

ISSUE

Does the Minnesota court have jurisdiction under the Minnesota Long-Arm Statute, M.S. 543.19, and under the Due Process Clause of the 14th Amendment of the U.S. Constitution?

CONCLUSIONS OF LAW

In Minnesota, as well as many other jurisdictions, the reach of the Long-Arm Statute extends to the limits allowed by the Due Process Clause. Therefore, the permissibility of this court's exercise of jurisdiction may be analyzed under the constitutional standards announced by the U.S. Supreme Court. *See Rostad v. On-Deck, Inc.*, 372 N.W.2d 717, 719 (Minn. 1989).

The question of Long-Arm jurisdiction under the Due Process Clause has been the subject of interpretation by the Court commencing with *International Shoe Co. v. Washington*, 325 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). In that case, the Court ruled that the State of Washington could exercise jurisdiction over International Shoe within the limitations of the Due Process Clause.

The facts were not in dispute. International Shoe was a Delaware corporation with its principal place of business in St. Louis, Missouri. It was in the business of manufacturing and distributing footwear. International

shoe did not have offices in Washington. Nor did the corporation appoint an agent for service of process within the state.

The corporation did, though, employ 11 to 13 resident salesmen in Washington who were compensated on a commission. It also provided its salesmen with sample footwear for display to potential customers, but it did not maintain a stock of merchandise in Washington. And, International Shoe reimbursed its salesmen when they would occasionally lease display rooms.

The salesmen's only duty was to solicit orders for acceptance or rejection at the St. Louis office. Merchandise was then shipped to the Washington customers from outside the State. The salesmen did not have authority to enter into contracts or to make collections. In fact, their only function was to take and then forward orders for footwear to the St. Louis office.

The proceeding by the State of Washington to recover contributions to the State's Unemployment Compensation fund was initiated by personal service upon one of these sales solicitors. International shoe appeared specially to contest the court's exercise of jurisdiction. The trial court found sufficient presence within the state by International Show [sic] to support jurisdiction, based on the activities of the salesmen which resulted in regular delivery of the corporation's products into the State.

The U.S. Supreme Court briefly reviewed the history of its jurisdictional decisions – where presence within the territory was the key factor. The Court reasoned that for the modern corporation, presence within a State merely means those activities carried on by the corporation or its

agents. The Court then announced that "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945).

The Court recognized that a corporation's activity in the state must be more than single or isolated items of activity which are *unrelated* to the cause of action. *Id.*, 326 U.S. at 317, 66 S.Ct. at 159. Likewise, jurisdiction is lacking despite continuous activity by the defendant if that activity is unrelated to the claim. *Id.*, 326 U.S. at 318, 66 S.Ct. at 159. Finally, if single or occasional acts within a state are *related* to a liability then "other such acts, because of their nature and quality and their circumstance of their commission, may be deemed sufficient to render the corporation liable to suit." *Id.*

Given the range of factual bases in its prior rulings, the Court declined to implement a mechanical or quantitative test to measure "minimum contacts." Rather, the Court announced a rule that requires a case-by-case analysis. Whether due process is satisfied depends upon "the quality and nature of the activity *in relation* to the fair and orderly administration of the laws . . . . " *Id.*, 326 U.S. at 319, 66 S.Ct. at 160 (Emphasis added).

The Court in *International Shoe* was concerned with the reasonableness of a states's exercise of jurisdiction over nonresident corporations. In addition to the "quality and nature" of the contacts, and the relationship of those

activities to the liability, and "estimate of the inconveniences" resulting to the nonresident corporation is also relevant. *Id.*, 326 U.S. at 317, 66 S.Ct. at 158.

The Supreme Court upheld Washington's exercise of jurisdiction finding systematic and continuous contacts between International Shoe and the State. The Court emphasized that the obligation to be enforced by Washington arose from those very contacts. the Court further found that it was reasonable to exercise jurisdiction under those circumstance [sic] as International Shoe had "received the benefits and protections of the laws of the state . . . ," by participating in the market with its product. *Id.*, 326 U.S. at 320, 66 S.Ct. at 160.

The minimum contact theory of jurisdiction was clarified by *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). In this case the Court faced a situation quite unlike the deliberate reach into a foreign state's marketplace it found in *International Shoe*. In this case, the corporate presence within the forum State was literally accidental. Oklahoma's interest in the litigation was purely incidental.

In *World-Wide*, the plaintiffs had purchased an Audi from a New York retail dealer. The plaintiffs resided in New York at that time, but decided one year later to move to Arizona. As they travelled to their new home, a collision occurred in Oklahoma resulting in injuries to the plaintiffs. They claimed that a design defect in the Audi's fuel system led to their injuries. Plaintiffs brought suit in Oklahoma joining the dealer, its regional distributor, the importer and the manufacturer Audi. The dealer and

distributor contested Oklahoma's exercise of jurisdiction to the supreme court.

The Oklahoma Supreme Court held that jurisdiction was proper in the Oklahoma forum given the *foreseeability* of the use of the Audi in Oklahoma. The Oklahoma Court reasoned that the New York defendants were able to derive substantial profits from Audi sales, in part because the automobiles are capable of interstate travel. These defendants indirectly profited from the manufacturer's and importer's national network of service centers and other agencies. However, their relationship to the national-level vendors was purely contractual. The New York defendants' direct business was primarily in the New York area, and there was no showing that any automobile sold by the regional distributor or the dealer had ever entered into Oklahoma before. *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 290, 100 S.Ct. 559, 563, 62 L.Ed.2d 490 (1980).

The Supreme Court reversed. The Court ultimately based its opinion on the lack of *contacts* by the defendant with Oklahoma. The court rejected the argument that foreseeability of consequences, standing alone, can satisfy the minimum contacts requirement where only an isolated, though liability producing, contact exists with the forum. If it accepted foreseeability as a basis, the Court feared that "Every seller of chattels would in effect appoint the chattel his agent for service of process." *Id.*, 444 U.S. at 296, 100 S.Ct. at 566. Therefore, the Court held that a corporation must "purposefully avail itself of the privilege of conducting activities within the forum State" before jurisdiction can be properly exercised. *Id.*, 444 U.S. at 297, 100 S.Ct. at 567.

In *World-Wide*, it was the plaintiffs' unilateral activity which brought the Audi to Oklahoma. It could not be said that the New York defendants had "purposefully availed" themselves of any privilege or benefit accruing from Oklahoma. The Court found that the indirect financial benefits from the national network of the importer and manufacturer were too attenuated to satisfy the requirement. The Court therefore held that the New York defendants had no contacts with the forum which would permit Oklahoma to exercise jurisdiction. *Id.*, 444 U.S. at 299, 100 S.Ct. at 568.

The Court distinguished foreseeability from the mere likelihood of an indirect contact. Although foreseeability alone is not enough, the Court clearly stated that something more would satisfy due process:

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other states, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

Id., 444 U.S. at 297-98, 100 S.Ct. at 567. The Court found that the defendants' participation in the stream of commerce in this case was too minimally directed toward

Oklahoma to exert jurisdiction, stressing that it was the plaintiffs' unilateral course of action which brought the Audi to that State.

The difficulty of this issue resulted in a severely divided Court in the recent case of *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987). In *Asahi*, the Court asked whether placing a product in the stream of commerce with an awareness that it would reach the forum State constitutes minimum contacts such that jurisdiction is fair and reasonable.

The case arose when a California motorcyclist sued a number of defendants including Cheng Shin Rubber Industry, the Taiwanese manufacturer of a tire tube. He alleged that a defect in the tube caused a collision which severely injured him and killed his wife. The Taiwanese manufacturer brought in Asahi, the Japanese manufacturer of the tube's valve assembly, by a third party complaint. After all of the other parties had resolved their disputes, Asahi moved to quash the third party summons of Cheng Shin. The Supreme Court of California upheld the exercise of jurisdiction on a stream of commerce theory.

The U.S. Supreme Court unanimously reversed. This portion of the opinion, though, dealt with the "fairness" aspect of the *International Shoe* analysis. The Court had before it two foreign corporations. There were no remaining parties who were residents of the United States, let alone California. All negotiation, contracting, manufacturing and delivery between Asahi and Cheng Shin

occurred in the Orient. There was no showing that California had any interest left in the case. Nor could Cheng Shin show that it was more convenient for it to litigate its claim against Asahi in the California forum, than elsewhere in Japan or Taiwan. Additionally, the burden on both parties of litigating in a foreign system, half way around the world, was severe. The Court was unanimous in holding that: "Considering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State, the exercise of personal jurisdiction by a California court over Asahi in this instance would be unreasonable and unfair." *Asahi*, 107 S.Ct. at 1035.

The Court did not agree whether minimum contacts were shown. The plurality of Justice O'Connor sought to narrow the stream of commerce theory by requiring "something more" than entering the stream of commerce with an awareness of its path. She wrote that:

> The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State. . . . But a defendant's awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state.

Id., at 1033.

Justice Brennan thought minimum contact with California had been made by Asahi by its purposefully placing its product into the stream of commerce with the knowledge and expectation that it would thereby derive economic benefits from California consumers. Although Asahi did not design or control the stream which carried its product to California, it did expect to profit from it. *Id.*, 107 S.Ct. at 1036. In Brennan's view, Asahi could also therefore expect the possibility of litigation in California resulting from those contacts. This is true, Brennan argued, whether or not the defendant engages in additional conduct directed toward the State. *Id.*, 107 S.Ct. at 1035.

This lawsuit presents factual circumstances which are distinguishable and far more compellingly in favor of jurisdiction than both the *World-Wide* and *Asahi* cases. First, in *World-Wide*, the Court faced a situation where the Oklahoma forum appears convenient only to the plaintiff's attorney. All of the parties, including the plaintiffs, were from distant states. Furthermore, the parties moving for dismissal had remained essentially local in their conduct, catering to a localized market. The fortuitous circumstances which led to their appearance in the Oklahoma courts were unilaterally caused by the plaintiffs. Although it was foreseeable to the defendants that an automobile sold by them in New York would reach Oklahoma, serving an Oklahoma market was clearly not their expectation.

Second, in *Asahi*, the California plaintiff had completely settled his claim and there were no other resident parties to the litigation. The California court had a greatly

diminished interest in the litigation that was far outweighed by the inconvenience to the foreign parties. Although the defendants had directed their products in the stream of commerce with the expectation of serving California customers, the Court emphasized the inherent unfairness of subjecting these corporations from the other side of the world to a foreign forum's laws. (Query whether the Court's rationale, if not its decision, would have been quite different if the plaintiff remained as a real party in interest and Asahi was the only viable defendant.)

In the three cases presently before this Court, each of the plaintiffs are individual residents (or their heirs) who were employed in Minnesota, exposed to the asbestos fiber in Minnesota, and completely subject to the trauma and resulting injury in Minnesota. The actions of the plaintiffs have had no effect on the presence of Empire-Ace's product in Minnesota. On the contrary, it was the acts of Empire-Ace whereby this fiber was placed into the mainstream of national commerce. The defendant knew, expected and desired that it would reach virtually every state, including Minnesota. It was a continuous and systematic process over more than a decade by which Empire-Ace purposefully availed itself of the 'regular and anticipated flow of products from manufacturer to distributor to retail sales' and use in states throughout the nation. *See Asahi* 107 S.Ct. at 1035 (J. Brennan concurring in part).

Empire-Ace, as a supplier of raw asbestos fiber, sits at the nexus of the asbestos litigation problem. It is this very fiber which is ingested into the human body, and admittedly causes the resulting asbestosis and/or more

complicated medical problems for the injured individuals. In *World-Wide* the defendants were merely local distributors. The benefits indirectly accruing to them were found to be inadequate to support jurisdiction. In these asbestos cases, the defendant is a manufacturer and, as such, has a greater stake in both the benefits and obligations flowing from the sales of its products. *See Max Daetwyler Corp. v. R. Meyer*, 762 F.2d 290, 303 (1985) (J. Sloviter dissenting). Empire-Ace is not a casual distributor or other such peripheral party.

Also, looking at the interest of the individual plaintiffs, we have compelling reasons to retain jurisdiction. The thousands upon thousands of asbestos cases filed in the United States show, beyond any question, the presence of a multitude of defendants from numerous states who have had varying degrees of alleged responsibility for the plaintiffs' injuries.1 [sic] The national asbestos industry, including miners, processors, manufacturers, distributors, and installers, have worked together in an industrial endeavor resulting in asbestos products being place in every state of the union, including Minnesota. It would be totally impossible for an injured individual to have his or her day in court if they are unable to commence a single lawsuit within the state where the exposure and resulting trauma occurred. If Minnesota cannot provide a forum for these individuals, then they are without legal remedy (and so are literally thousands of other individuals suffering from asbestosis and related injuries). There is no conceivable way by which an injured worker could go out to ten, twenty or conceivably thirty different jurisdictions and commence individual lawsuits against the defendants who are responsible for

the product's presence in Minnesota through the chain of distribution. It is absolutely essential that an individual suffering from asbestosis be allowed to sue all of the parties within a single forum.

Lastly, Minnesota has a clear and compelling interest in providing a forum for this litigation and in requiring this defendant and all other proper parties to participate in the process. The defendant's fiber was marketed as a national product by this defendant. As a direct result, it was contained within products which were shipped into this state. These plaintiffs, and others, are residents of this state and members of our working force who were subjected to the fiber and sustained the resulting trauma and ~~injury.~~ Minnesota's interest in this litigation cannot be described except as substantial.

Thus, if we are going to review closely the conduct of this defendant, we find that they have met the requirements of the Minnesota Long-Arm Statute and the Due Process Clause of the United States Constitution. Any inconvenience resulting to the defendant, who is represented by competent local counsel, is far outweighed by the compelling interest of Minnesota in providing a single forum for resolution of the dispute.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Defendant Empire-Ace's motion for dismissal is DENIED.

BY THE COURT:

/s/ Thomas H. Carey
Thomas H. Carey
Judge of District Court

Dated: August 25, 1989.

EXHIBIT C

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF KOOCHICHING — NINTH JUDICIAL DISTRICT

David Backlund,

Plaintiff,

vs.

A.P.I., Inc., et al.,

Defendants.

File No. 36-C-90-166

ORDER

(Filed Feb. 25, 1991)

The above-entitled matter came on for hearing on the Special Term motion calendar before the Honorable Thomas H. Carey, Judge of District Court, on December 20, 1990, at the Hennepin County Government Center, Minneapolis, MN. This case is the lead case of 35 Koochiching County cases. David Thompson, Esq., appeared on behalf of plaintiffs. Patricia Burke, Esq., appeared on behalf of defendant L.A.Q.

IT IS HEREBY ORDERED:

1. The motion of defendant L.A.Q. for dismissal of plaintiff's complaint against it for lack of personal jurisdiction is herein denied.

2. This Order is deemed applicable to all unresolved summary judgment motions herein filed concurrently, pursuant to the Deeming Order of June 30, 1989.

3. The attached Memorandum is made a part hereof.

/s/ Thomas H. Carey
Thomas H. Carey
Judge of District Court

Dated: February 25, 1991

MEMORANDUM

The Court's position is set forth in the case of *Theresa C. Stenberg, as surviving spouse and Trustee for the Heirs of Duane A. Stenberg v. Amchem Products, Inc., et al.*, Ninth Judicial District, County of Koochiching, State of Minnesota, file number 36-C-87-167. The defendant has urged this Court to issue a jurisdictional order of dismissal on the basis of alleged factual distinction, as well as a request for reconsideration of the Court's position in Stenberg.

I am not persuaded to alter my position as previously set forth in the Stenberg case, and incorporate the Memorandum of Law contained therein, by reference, where pertinent to the facts and issues now before us.

The additional comments I would make herein are two-fold. First, I think it necessary to dispel any inference that the defendant corporations only contact with the State was in the nature of "general knowledge that stream of commerce *might* take its product into [Minnesota]". [See *Olmstead County v. Trailer Equipment Warehouses, Inc.*, 421 Northwest 2nd 395 (1988) (emphasis furnished)] The facts of this case persuade the Court that the defendant

had more than a simple general knowledge that its product might show up in Minnesota some day. This defendant, like other manufacturers and distributors of raw asbestos fiber, were an active participant in a national marketing scheme.

In other words, we are not dealing with the sale of a limited quantity of raw material to a local or regional manufacturer. Rather, we are talking about the marketing of mass quantities of raw materials to international manufacturers at a time all parties clearly knew that the end product would be distributed on a national basis in every State of the Union. In its letter memorandum, defendant L.A.Q. attempts to distinguish itself from the fact situation of the *Rostad* case wherein the Court stated, "A manufacturer who places its product in the stream of commerce in effort to serve, directly or indirectly, markets in a jurisdiction is subject to suit in that jurisdiction." [*Rostad v. On-Deck, Inc.*, 372 N.W.2d 717 (1985).] While the case before us is not a distributorship situation, it is one of indirect marketing in this jurisdiction, to say the least. Defendant has not asserted that it mined only a limited amount of its product, or sold only to local or regional manufacturers; rather, it is obvious that they mined, marketed, and sold their product to manufacturers, knowing full well that the end product was distributed in every State of the Union. Thus, I feel that they are clearly within the concepts of due process and the logic of the *Rostad* case.

Secondly, we must weigh the due process requirements and the Long-Arm Statute of Minnesota with a

realistic evaluation of the plaintiff's position. We are dealing here with individual plaintiffs who are facing a multitude of defendants in each of these cases. It is virtually impossible as a practical matter, and as a financial burden, to expect an individual plaintiff involved in this type of complex litigation to commence separate actions in several forums in order to secure their day in court. When weighing the interest on both sides of the lawsuit, that of plaintiffs and that of defendants, all of the equities come down on the side of the plaintiff and require that we provide a single forum so that the case may be heard. If we do not do so, plaintiffs will not have an opportunity to recover against certain defendants, and other defendants will certainly be blocked, as an equally practical matter, from securing indemnity and/or contribution. When weighing the reasonableness and fairness to the parties, we must, first of all, come to grips with the unequivocal and absolute necessity of providing a forum for dispute resolution of complex litigation and avoiding a multiplicity of suits in several states.

Thus, the unique characteristics and problems compel a finding of jurisdiction under the facts of these cases.

The unique facts of complex litigation, particularly the voluntary national marketing of the defendants and the possibility that plaintiffs may be left without any forum, adds new meaning to the stream of commerce theory of Justice Brennan. [See dissent, *Asahi Metal Industry Co., Ltd., v. Superior court of California, Solano County,* 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).]

If we apply the rationale of Justice Brennan's dissent and look closer at the "stream of commerce" theory, we

can see that there is a substantial distinction between those local companies that know they might end up in another state and those local companies that decide that they want to produce sufficient quantity of product, expend sufficient financial resources, and use their working force to literally make sure that they have an opportunity to compete on a national basis.

Secondly, there is an equally compelling distinction between a plaintiff who is asked to simply begin his lawsuit somewhere else and those asbestos plaintiffs that are told there is no single forum and they must litigate the same claim over and over again in several jurisdictions.

The additional grounds for jurisdiction presented by plaintiff deals with a conspiracy theory. In support of this position, they have furnished the Court with the decision of Judge VanSickle in the case of *In Re: North Dakota Personal Injury Asbestos Litigation*, 737 F.Supp. 1087 (D.N.D. 1990). While fully appreciating Judge VanSickle's position on "jurisdiction by conspiracy", I have to conclude that the facts are totally lacking for application of this theory to the defendants at hand. The mere membership of Cassiar in a national organization and these concurrent facts alleged by plaintiff simply fall totally short of a minimal factual basis for application of a conspiracy doctrine.

/s/ THC
T.H.C.

EXHIBIT D

NOTICE: MEDIA AND COUNSEL ARE PROHIBITED FROM MAKING THIS OPINION OR ORDER PUBLIC PRIOR TO 12:01 A.M. ON THE DATE APPEARING BELOW

STATE OF MINNESOTA

IN COURT OF APPEALS
C8-91-453/CX-91-518

Hennepin County
District Court File 903349

Parker, Judge

Stanley Stanek, et al.,

Respondents,

vs.

A.P.I., Inc., et al.,

Defendants,

Michael A. Jaksa
Shermoen, Leduc & Jaksa
345 Sixth Avenue
International Falls, MN
56649

Lac d'Amiante du Quebec, Ltee,

Appellant,

Eric J. Magnuson
Patricia A. Burke
Stephen O. Plunkett
Rider, Bennett, Egan & Arundel
2000 Lincoln Centre
333 South Seventh Street
Minneapolis, MN 55402

Roy A. Cohen
Porzio, Bromberg & Newman
163 Madison Avenue
Morristown, NJ
07962-1997

and

Robert Lindholm,

Respondent,

vs.

A.P.I., Inc., et al.,

Defendants,

Cassiar Mining Corp.,

Appellant.

Dale J. Craft
David C. Thompson
Craft, Thompson & Boechler
16 North Broadway,
Suite 315
Fargo, ND 58107-1932

Gary J. Haugen
Mark W. Lee
Maslon, Edelman, Borman & Brand
1800 Midwest Plaza
Minneapolis, MN 55402

Wendy S. White
Elizabeth Runyan Geise
J. Theodore Gentry
Shea & Gardner
1800 Massachusetts Avenue N.W.
Washington, D.C. 20036

Filed August 27, 1991
Office of Appellate Courts

SYLLABUS

1. A pretrial order denying a motion to dismiss for lack of jurisdiction is appealable as of right.

2. An appellate court may consider documents which were filed and provided to the trial court but not placed in the trial court file by the court administrator

because of a filing technicality. *See* Minn. R. Civ. App. P. 110.05.

3. Minnesota courts may exercise personal jurisdiction over a foreign asbestos-mining corporation, when the plaintiffs allege personal injuries due to exposure to the product while working at Minnesota companies and when the foreign corporation had direct contacts with Minnesota and placed its product in the nationwide stream of commerce.

Affirmed.

Considered and decided by Parker, Presiding Judge, Foley, Judge, and Forsberg, Judge.

OPINION

PARKER, Judge

Lac D'Amiante du Quebec, Ltee, formerly known as Lake Asbestos of Quebec, Ltd. ("LAQ"), moved the trial court to dismiss Stanley Stanek's and Robert Lindholm's personal injury lawsuits against it for lack of personal jurisdiction. The trial court denied the motion. LAQ appeals from this order.[1] Stanek and Lindholm challenge the appealability of the order. LAQ moved this court to strike portions of Stanek's and Lindholm's brief. We affirm.

---

[1] Cassiar Mining Corp. similarly moved to dismiss for lack of personal jurisdiction and appealed from the trial court's order denying its motion. We do not address Cassiar's appeal, because respondents' counsel indicated in briefs and at oral argument that they settled their case with Cassiar.

FACTS

Respondents Stanley Stanek and Robert Lindholm brought personal injury claims against miners of raw asbestos fiber and manufacturers and distributors of products containing asbestos. LAQ is in the business of mining, milling and selling raw asbestos fiber.

Stanek and Lindholm have used and been exposed to asbestos and asbestos-containing products through their employment. As a result, they allegedly suffer from asbestos-caused pulmonary diseases, cancer and disability.

Since 1952, LAQ has been a Delaware corporation, with its principal place of business in Black Lake, Province of Quebec, Canada. LAQ has supplied raw asbestos fiber to a number of manufacturers, including Armstrong World Industries; Fiberboard Corporation; H. K. Porter Company, Inc.; Owens-Corning Fiberglas Corporation; Raybestos Manhattan (a/k/a Raymark); United States Gypsum Company; and United States Mineral Products Company.

LAQ does not maintain an office in Minnesota or employ any officers or employees in Minnesota. It has never had a subsidiary company doing business in Minnesota and has never been registered as a foreign corporation doing business in Minnesota. In addition, it does not maintain any bank accounts in Minnesota; own or lease any real or personal property in Minnesota; have a listing in any Minnesota telephone directory; have a Minnesota mailing address; or advertise in the Minnesota media.

LAQ did sell raw asbestos fiber, "F.O.B. Black Lake, Quebec," to a Ruberoid plant in Minneapolis between 1959 and 1963. LAQ dealt with a Minnesota sales representative in the mid-1960s. LAQ corresponded with 3M Company five times between May 1962 and November 1964 regarding the potential sale of raw asbestos fiber, and an LAQ salesman visited 3M in St. Paul in 1963. LAQ mailed price lists to 3M in 1970, 1974 and 1976.

ISSUES

1. Is a pretrial order denying a motion to dismiss for lack of personal jurisdiction appealable as of right?

2. Should this court consider on appeal documents which were filed and provided to the trial judge but returned by the court administrator due to a filing technicality?

3. Does LAQ have sufficient minimum contacts with Minnesota to permit exercise of personal jurisdiction over it in Minnesota?

DISCUSSION

I

An order denying a motion to dismiss for lack of personal jurisdiction is appealable as of right. *See In re State & Regents Asbestos Cases*, 435 N.W.2d 521, 522 (Minn. 1989) (orders granting or denying pretrial motions to dismiss for lack of personal jurisdiction are appealable as a matter of right under principles independent of the appellate rules); *S.B. Schmidt Paper Co. v. A to Z Paper Co.*, 452 N.W.2d 485, 487 (Minn. App. 1990) ("appeal from an

order denying a pretrial motion to dismiss for lack of personal jurisdiction is properly before this court because such orders are constitutionally appealable as of right").

LAQ was not required to seek discretionary review under Minn. R. Civ. App. P. 105. Thus, its appeal is proper.

II

LAQ moved to strike the deposition excerpts of William F. Justice at pages 45-50 of Stanek's and Lindholm's appendix and the references to this appendix at page five of their brief. This deposition testimony indicates that LAQ was a major supplier of Canadian asbestos to the United States market. LAQ asserts that these deposition pages were not filed with the trial court. *See* Minn. R. Civ. App. P. 110.01; *Safeco Ins. Co. v. Diaz*, 385 N.W.2d 845, 847 (Minn. App. 1986), *pet. for rev. denied* (Minn. June 30, 1986) (appellate court cannot base its decision on matters outside the record on appeal).

Stanek and Lindholm argue that these deposition excerpts were included as appendices to a joint supplemental memorandum of plaintiffs. The memorandum was initially filed in the court administrator's office on February 13, 1991. On February 14, 1991, a deputy court administrator returned the memorandum with a note indicating that original memoranda must be filed for each case. Stanek and Lindholm had filed one original for their two cases. Copies of the memorandum and its appendix were served on LAQ and copies were sent to the trial judge.

The deposition excerpts were available for the trial court to consider. The original was omitted from the record because of a technical necessity of the court administrator's office; this does not vitiate the fact that the deposition excerpt was originally filed and before the trial court.

Under Minn. R. Civ. App. P. 110.05, this court can correct an omission from the record. We deny LAQ's motion to exclude and strike a portion of respondents' brief and appendix. We also deny LAQ's motion for attorney fees and sanctions.

III

Two criteria must be met before a Minnesota court may exercise personal jurisdiction over a nonresident defendant: (1) the long-arm statute, Minn. Stat. § 543.19 (1990), must be satisfied; and (2) there must be "minimum contacts" between the defendant and this state to satisfy the due process clause. *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717, 719 (Minn. 1985).

This court need not defer to the trial court's decision, because the determination of whether personal jurisdiction exists is a question of law. *See Mahoney v. Mahoney*, 433 N.W.2d 115, 117 (Minn. App. 1988), *pet. for rev. denied* (Minn. Feb. 10, 1989); *Janssen v. Johnson*, 358 N.W.2d 117, 120 (Minn. App. 1984). "The reach of a state's long-arm statute is a question of state law, while the extent to which the reach of the long-arm statute is limited by due process is a question of federal law." *Now Foods Corp. v. Madison Equip. Co.*, 386 N.W.2d 363, 366 (Minn. App.

1986), *pet. for rev. granted and summarily vacated*, 395 N.W.2d 926 (Minn. 1986).

Personal jurisdiction may be exercised over any foreign corporation in the same manner as if it were a domestic corporation "[a]s to a cause of action arising from any acts enumerated by this subdivision." Minn. Stat. §543.19, subd. 1 (1990). This subdivision applies if a foreign corporation:

> (d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:
>
> (1) Minnesota has no substantial interest in providing a forum; or
>
> (2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice * * * .

Id.

Both the Minnesota Supreme Court and this court have held that the legislature intended Minnesota's long-arm statute to "have the maximum extraterritorial effect allowed under the due process clause of the federal constitution." *Rostad*, 372 N.W.2d at 719; *S.B. Schmidt Paper v. A to Z Paper*, 452 N.W.2d at 487. The *Rostad* court stated, "the permissibility of an attempted exercise of jurisdiction [under the long-arm statute] may be tested by analyzing whether it meets constitutional muster." *Rostad*, 372 N.W.2d at 719.

Accordingly, personal jurisdiction is proper in this case, where Minnesota workers sustained injuries in Minnesota, so long as the due process clause is satisfied.

When a defendant moves to dismiss for lack of personal jurisdiction at the pretrial stage, "the plaintiff must make a prima facie showing of minimum contacts through its complaint and supporting evidence, 'which will be taken as true.' " *Johnson Bros. Corp. v. Arrowhead Co.*, 459 N.W.2d 160, 163 (Minn. App. 1990) (quoting *Hardrives, Inc. v. The City of LaCrosse*, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (Minn. 1976)). "[D]oubt should be resolved in favor of retention of jurisdiction." *Hardrives*, 307 Minn. at 296, 240 N.W.2d at 818, *cited in Johnson Bros.*, 459 N.W.2d at 163.

"Due process requires that a defendant have minimum contacts with a jurisdiction before being required to defend against a lawsuit in that jurisdiction." *Rostad*, 372 N.W.2d at 719 (Minn. 1985) (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945)). Minnesota uses a five-factor test to determine if minimum contacts exist. *Rostad*, 372 N.W.2d at 719. The court evaluates:

(1) The quantity of contacts with the forum state;

(2) The nature and quality of contacts;

(3) The source and connection of the cause of action with these contacts;

(4) The interest of the state providing a forum; and

(5) The convenience of the parties.

Id. at 719-20. Although the last two factors by themselves are insufficient to establish minimum contacts, they merit consideration. *See Now Foods*, 386 N.W.2d at 368.

1. Quantity of Contacts

In *Rostad* the Minnesota Supreme Court explicitly adopted the stream-of-commerce theory for manufacturers or primary distributors to analyze the quantity of the contacts. The *Rostad* court quoted the standard from *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98, 100 S.Ct. 559, 567 (1980):

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve *directly or indirectly*, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum *State does not exceed its power under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.*

Rostad, 372 N.W.2d at 720 (emphasis added by *Rostad* court).

In *Rostad*, 372 N.W.2d at 722, the Minnesota Supreme Court adopted the holding of *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961), although it was applied in a limited way. In *Gray*,. 22 Ill.2d at 442, 176 N.E.2d at 767, the Illinois Supreme

Court relied on the stream-of-commerce theory and held that personal jurisdiction over a foreign corporation satisfied due process of law where an Illinois resident sued for injuries sustained when a water heater allegedly exploded. The defendant manufactured safety valves in Ohio which were sold to the water heater manufacturer outside of Illinois. *Id.* at 438, 176 N.E.2d at 764.

In adopting the *Gray* holding, the *Rostad* court stated that even though the actual marketing of the product is done by intermediaries,

> through their actions in marketing their product, [the defendants] sought to serve the Iowa market, and therefore should be amenable to the jurisdiction of the Iowa courts. * * * [I]t is reasonable to infer that their commercial transactions resulted in more than insubstantial use and consumption in this state. *See Gray*, [22 Ill.2d at 441-42, 176 N.E.2d at 766]. This affords a sufficient basis for the conclusion that the [defendants], through the Omaha distributor, indirectly sought to serve the Iowa market, and consequently are subject to suit within this state.

Rostad, 372 N.W.2d at 721 (quoting *Svendsen v. Questor Corp.*, 304 N.W.2d 428, 431 (Iowa 1981)).

Similarly, as indicated by William Justice's deposition, LAQ was selling asbestos to companies (large U.S. corporations). This leads to the natural inference that the asbestos fiber was to be put into the nationwide stream of commerce through the marketing of one or more of those major corporations. It is also reasonable to infer that the asbestos reached Minnesota, a major manufacturing and industrial center of the upper Midwest.

According to four justices in *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 102, 112, 107 S.Ct. 1026, 1032 (1987), "something more" than the defendant's act of placing the product in the stream of commerce is required to satisfy due process. Five justices, however, refused to join in this part of the opinion, explicated by Justice O'Connor. Thus, we conclude that the stream-of-commerce theory advanced in *Gray* and followed in *Rostad* has not been limited by the U.S. Supreme Court.

Having said this, it is evident that there is "quite a bit more" contact with the forum state as presented here. LAQ made direct sales in Minnesota from 1959 to 1963. It has solicited business in Minnesota. More specifically, an LAQ sales representative visited Minnesota in the mid-1960's; it mailed soliciting correspondence to 3M Company's Minnesota plant in 1963; and it mailed price lists to 3M Company in 1970, 1974 and 1976.

LAQ cites a number of clearly distinguishable cases. In *Olmsted County v. Trailer Equip. Warehouse*, 421 N.W.2d 395, 396 (Minn. App. 1988), this court affirmed a trial court's order dismissing for lack of personal jurisdiction where the manufacturer's sole connection to Minnesota was a trailer hitch it manufactured and sold in Oklahoma. The hitch was installed in a trailer in Oklahoma and the trailer was driven to Minnesota, where the hitch injured a Minnesota resident. Personal jurisdiction did not exist, because the case did not involve a stream-of-commerce theory. *Id.* The manufacturer sold the trailer hitch in another state and it was driven here fortuitously. *Id.*

Driving a vehicle to another state and having an accident due to a defective part does not, by itself, provide a basis for personal jurisdiction over manufacturers or distributors. *See World-Wide Volkswagen*, 444 U.S. at 295, 100 S.Ct. at 566 (exercise of personal jurisdiction over an automobile retailer and regional distributor, whose sole connection with the forum state was occurrence of the automobile-related injury, was incompatible with the due process clause). In *World-Wide Volkswagen* the retailer and regional distributor were not casting the automobiles into a nationwide market. At most, they were putting vehicles in use anywhere roads might lead them. *Id.* *World-Wide Volkswagen* and *Olmsted County* present factual situations that differ from the modern commerce situation in *Gray* and present here.

In *Johnson Bros. Corp.*, 459 N.W.2d at 161, this court, reversing the trial court, dismissed for lack of personal jurisdiction where Rocky Mountain Fireworks, a fireworks manufacturer, had, at most, a tenuous contact with this state. It supplied some fireworks to a Kansas fireworks supplier, who supplied fireworks to a company preparing a Duluth fireworks display. *Id.* at 162. Rocky Mountain Fireworks had specifically limited its distribution to a region which did not include Minnesota. *Id.* at 164. The contact in *Johnson Bros.* is distinguishable from the contacts in the instant case. For example, LAQ did not specifically limit its distribution region.

Based on LAQ's direct contacts and its indirect contacts through the stream of commerce with Minnesota, we conclude that the quantity of LAQ's contacts with Minnesota weighs in favor of exercising personal jurisdiction.

2. Nature and Quality of Contacts

In evaluating this factor, this court should determine whether LAQ "purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of [Minnesota] law." *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983) (citing *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239 (1958)). Purposeful availment may be established, like quantity of contacts, through a stream-of-commerce theory. *See Rostad*, 372 N.W.2d at 720-22.

In *Gray*, 22 Ill.2d at 442, 176 N.E.2d at 766, the court inferred sufficient number and quality of contacts as a reasonable assumption from the character of the business. In *Rostad*, 372 N.W.2d at 722, the nature of the manufacturer's contact was sales: "It has profited by sale of thousands of its bat weights in Minnesota."

Similarly, LAQ has profited from the widespread sale of asbestos. It is unknown which of LAQ's sales reached Minnesota, other than those to Ruberoid. Nevertheless, its extensive sales to large American distributors suggest contacts sufficient in nature and quality so that a reasonable inference may be drawn from the character of the business. *See Gray*, 22 Ill.2d at 442, 176 N.E.2d at 766.

Despite its apparent remoteness, the insidious and long-term effects of asbestos have been recognized due to the unique character of the product and the character of the resulting disease. *DeCosse v. Armstrong Cork Co.*, 319 N.W.2d 45, 48-49 (Minn. 1982). Accordingly, the nature and quality of LAQ's contacts with Minnesota weigh in

favor of finding sufficient minimum contacts to satisfy due process.

3. Source of Contacts

This factor does not add to or change our analysis of the first two factors.

4. Interest in Providing a Forum

Section IIB of the *Asahi* opinion discusses "traditional notions of fair play and substantial justice." This is the only section of the opinion, other than the fact section, in which a majority of the justices concur. In *Asahi* the plaintiff, who had a motorcycle accident while in California, had settled his case in the Superior Court. *Id.* at 106, 107 S.Ct. at 1029. The case presented to the Supreme Court was a third-party indemnity action by a Taiwanese manufacturer of a motorcycle tire tube against a Japanese manufacturer of the tube's valve assembly. *Id.* Neither party was located within 5,000 miles of the California shore. Consequently, California had scant interest in providing a forum for the action. That situation is not presented to us.

We are confronted with the cases of Minnesota workers who allege they have been afflicted with terrible diseases as a result of exposure to asbestos. Minnesota has a strong interest in providing a forum for their cases. Indeed, it is inscribed in our constitution:

> Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and

> to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

Minn. Const. art. I, § 8.

5. Convenience of the Parties

LAQ, which is located in Quebec, is a Delaware corporation doing business in the United States. Minnesota, a border state, is not greatly inconvenient to this Canadian company. Thus, this factor, as do the others, weighs in favor of exercising personal jurisdiction over LAQ.

DECISION

LAQ's appeal is as of right. We deny LAQ's motion to strike a portion of respondents' appendix and brief. Accordingly, attorney sanctions against respondents' counsel are inappropriate.

This case presents adequate minimum contacts to satisfy due process of law. The trial court's exercise of personal jurisdiction over LAQ is proper.

Affirmed.

/s/ Edward Parker, Judge
Aug. 21, 1991

EXHIBIT E

STATE OF MINNESOTA IN SUPREME COURT

C8-91-453 and CX-91-518

OFFICE OF APPELLATE COURTS

(Filed Oct. 31, 1991)

Stanley Stanek, et al.,

Respondents,

vs.

A.P.I., Inc., et al.,

Defendants,

Lac d'Amiante du Quebec, Ltee,

Appellant,

and

Robert Lindholm,

Respondent,

vs.

A.P.I., Inc., et al.,

Defendants,

Cassiar Mining Corporation,

Appellant.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Lac d'Amiante du Quebec, Ltee for further review be, and the same is, denied.

Dated: October 31, 1991

BY THE COURT:

/s/ Lawrence R. Yetka
Lawrence R. Yetka
Associate Justice

SIMONETT, J. took no part.
COYNE, J. took no part.

EXHIBIT F

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Stanley Stanek,

Plaintiff,

vs.

A.P.I. Inc., a Minnesota corporation;

Armstrong World Industries, Inc., a Delaware corporation; (individually and as successor-in-interest to Armstrong Cork Company and Keasby & Mattison Company);

Atlas Turner, Inc., a Canadian corporation;

A.H. Bennett Company, a Minnesota corporation;

Asbestos Corporation, Ltd., a Canadian corporation;

Asbestos Product Manufacturing Corporation;

Asbestospray Corporation, (individually and as successor-in-interest to Asbestos Product Manufacturing Corporation);

Carey Canada, Inc., a Canadian corporation;

Cassiar Mining Corporation, Ltd., a Canadian corporation;

7. Personal Injury

Civil No.

COMPLAINT

Trial by a Jury of Nine Persons is Hereby Demanded

The Celotex Corporation, a Delaware corporation, (as successor-in-interest to Philip Carey Manufacturing Company, Philip Carey Corporation, Briggs Manufacturing Company, Panacon Corporation, and Smith & Kanzler Co., Inc.);

Crane Packing, Inc.;

Eagle-Picher Industries, Inc., an Ohio corporation;

Empire Ace Insulation Manufacturing Corporation, Inc., a New York corporation;

Fibreboard Corporation, a Delaware corporation, (individually and as successor-in-interest to Plant Rubber and Asbestos Company, Pabco Insulation Corporation, and Fibreboard Paper Products Corporation);

Flexitallic Gasket Co., Inc., a Connecticut corporation;

Flintkote Company, a Connecticut corporation;

GAF Corporation, a Delaware corporation, (individually and as successor-in-interest to The Ruberoid Company);

Garlock, Inc., a New York corporation;

Grant Wilson, Inc., an Illinois corporation;

W.R. Grace & Co., a New Jersey corporation, (individually and as successor-in-interest to Zonolite company and Western Mineral Products Company);

A.P. Green Refractories Co., a Delaware corporation;

H & A Construction Corporation, (individually and as successor-in-interest to Asbestos Product Manufacturing Corporation, Asbestospray Corporation and Spraycraft Corporation);

Hercules Chemical Co., a New York corporation;

Keene Corporation, a Delaware corporation, (individually and as successor-in-interest to Ehret Magnesia Manufacturing Company, Baldwin-Hill Company, Baldwin-Ehret-Hill, Inc., Keene Building Products Corporation and Mundet Cork Corporation);

Lac d'Amiante du Quebec, Ltee., f/k/a, Lake Asbestos of Quebec, a Canadian corporation;

MacArthur-Corporation, a Minnesota corporation;

National Gypsum Company, a Delaware corporation;

Owens-Corning Fiberglas Corp., a Delaware corporation;

Owens-Illinois, Inc., an Ohio corporation;

Pittsburgh Corning Corporation, a Pennsylvania corporation, (individually and as successor-in-interest to Unarco Industries, Inc.);

Rutland Fire & Clay, a Vermont corporation;

SEPCO Corporation, an Alabama corporation;

S.O.S. Products, a New York corporation;

Southern Textile Corporation (a subsidiary of H.K. Porter Company, a Delaware corporation and successor-in-interest to Southern Asbestos Company);

Spraycraft Corporation, (individually and as successor-in-interest to Asbestos product Manufacturing Corporation and Asbestospray Corporation); U.S. Gypsum Co., a Delaware corporation;

Union Carbide Corporation, a New York corporation;

U.S. Mineral Products Company, (individually and as successor-in-interest to Turner & Newall, Ltd. and Keasbey & Mattison Company);

Defendants.

Plaintiff, for his Complaint herein, states and alleges as follows:

I.

JURISDICTIONAL STATEMENT

The plaintiff Stanley Stanek is a resident of Mower County, Minnesota and brings this action for personal injury damages proximately caused by Plaintiff's exposure to asbestos fiber, the vast majority of which exposure to such asbestos fiber occurred within the State of Minnesota.

As is evidenced by the caption of the instant complaint, which is specifically incorporated herein, the defendants are foreign corporations which are amenable to jurisdiction in the courts of Minnesota by virtue of the quality of their respective direct or indirect contacts with the State of Minnesota and/or their conduct of substantial and/or systematic business in Minnesota all of which factors subject said defendants to the jurisdiction of Minnesota Court pursuant to Section 543.19 of the Minnesota Statutes Annotated. It is further alleged that these above-captioned foreign corporation defendants own, use, or possess real or personal property situated within Minnesota and/or transact business within Minnesota and/or have committed acts outside Minnesota which have caused injury and/or property in Minnesota. It is further alleged that some or all of the foreign corporate defendants captioned herein are authorized to transact business within Minnesota and are thus subject to provisions of Section 303.09 and 303.13 of the Minnesota Statutes Annotated. Each foreign corporate defendant has either

mined, manufactured, processed, imported, converted, compounded, wholesaled and/or retailed substantial amounts of asbestos and asbestos-related materials which have at legally relevant times been sold, distributed and used in Minnesota.

The plaintiff was exposed to various asbestos-containing products while working in various locations in Minnesota. Asbestos-related diseases are progressive, latent and insidious, and on information and belief, such exposure in Minnesota was a proximate cause of the plaintiff's asbestos-related disease.

Alternatively, all of the above-captioned defendants are tortfeasors which could not be joined by the plaintiff in a single civil action in any other forum given the subject matter of the plaintiff's claim arising from his asbestos-caused personal injury. Therefore, the above captioned court may or should exercise jurisdiction over the named defendants pursuant to the doctrine of jurisdiction of necessity.

Defendant A.H. Bennett Company, is a Minnesota Corporation, which transacts, and at all times relevant to the causes of action pleaded herein transacted, business within Hennepin County, Minnesota.

I.

FIRST CAUSE OF ACTION

1. At all times relevant to this action, defendants and predecessors of defendants for whose actions defendants are legally responsible (herein collectively referred to as "defendants") were engaged in the manufacture

and/or sale and/or distribution of asbestos-containing products and/or raw materials.

2. The defendants, acting through their agents, servants and/or employees caused certain asbestos and asbestos related materials to be placed in the stream of interstate commerce with the result that said asbestos and asbestos related materials came into use by the plaintiff.

3. Plaintiff is a pipefitter who, for a period of time, worked with and was exposed to the asbestos and asbestos-related materials mined, manufactured, processed, imported, converted, compounded and/or sold by the defendants, a significant portion of said exposure being within the State of Minnesota.

4. During the course and scope of his employment, plaintiff was exposed to defendants' asbestos and asbestos-related insulation materials, which exposure directly and proximately caused him to develop the illness of asbestosis and other asbestos-related diseases.

5. The illness and disability of the plaintiff are the direct and proximate result of the negligence, and/or recklessness and/or willfulness of the defendants, jointly and severally in that they produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-related materials which the defendants, and each of them, knew, or in the exercise of ordinary care, should have known were deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health.

6. The illness and disability of the plaintiff are the direct and proximate result of the negligence, recklessness, and willfulness of the defendants, jointly and severally, in that, even though the defendants knew, or, in the exercise of ordinary care, should have known, that the asbestos and asbestos-related materials were deleterious, poisonous and greatly harmful to plaintiff's body, lungs, respiratory system, skin and health, the defendants nonetheless:

(a) Failed to advise the plaintiff of the dangerous characteristics of their asbestos and asbestos-related products;

(b) Failed or omitted to provide the plaintiff with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliance, if, in truth, they were in any way able to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful asbestos-related materials;

(c) Failed and omitted to place any warnings or sufficient warnings on their containers of said asbestos and asbestos-containing materials to warn the handlers thereof of the dangers to health in coming in contact with said asbestos and asbestos-containing materials;

(d) Failed and omitted to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and installing said asbestos and asbestos-containing materials;

(e) Inadequately warned, if, in fact, they warned at all, persons such as plaintiff of the dangers to their health in coming in contact with and breathing said asbestos and asbestos-containing materials;

(f) Did not recommend methods to improve the work environment;

(g) Did not test its products or develop alternative products;

(h) Continued to use a known cancer causing product, to wit: asbestos.

7. At all times relevant, it was feasible for defendants to have warned plaintiff, tested their asbestos products and/or substituted asbestos-free products.

As a result of the negligence and/or recklessness and/or willfulness of the defendants, the plaintiff has been damaged severely as is set forth below.

III.

SECOND CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 7 and the First Cause of Action and incorporates the same herein.

8. The defendants, and each of them, impliedly warranted that said asbestos and asbestos-containing products were of good and merchantable quality and fit for their intended use.

9. The implied warranty made by the defendants, and each of them, that the asbestos and asbestos-containing products were of a good merchantable quality and fit for the particular intended use was breached and harmful

asbestos fiber was released from those products into the atmosphere as the plaintiff carried out his duties as a pipefitter working with asbestos and asbestos-containing materials.

10. As a direct and proximate result of the defendants' breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, plaintiff developed the illness of asbestosis and other asbestos-related diseases.

IV.

THIRD CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 throuqh 10 and the First and Second Causes of Action and incorporate the same herein.

11. Plaintiff and others in his position worked in close proximity to the asbestos and asbestos-containing materials of the defendants, and each of them, and plaintiff's presence, as well as that of others in his position, was known, or, in the exercise of reasonable care, should have been anticipated by the defendants, and each of them.

12. The defendants, and each of them, have for many years been aware of medical and scientific data which clearly indicated that asbestos and asbestos-related products were hazardous to the health and safety of the plaintiff and others in the plaintiff's position, yet prompted by pecuniary motives, the defendants, and each of them, individually and collectively, ignored and

failed to act upon said medical and scientific data, conspired to deprive the plaintiff and the public at large of said medical and scientific data, denying the plaintiff and others similarly situated of the opportunity of free choice as to whether or not to expose themselves to the asbestos and asbestos-containing products of said defendants. As a result, the plaintiff has been severely damaged as set forth below.

V.

FOURTH CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 12 and the First, Second and Third Causes of Action and incorporates the same herein.

13. That at various times in the past, defendants had actual knowledge of the dangers to plaintiff of asbestos exposure, but, defendants nevertheless deliberately, intentionally and purposefully withheld such information from the plaintiff, thus denying the plaintiff of the knowledge with which to take important precautionary measures such as periodic x-rays and medical examinations and avoiding further dust exposure, the specifics of defendants intentional acts being as follows:

(a) Failing to warn prior users of the need for monitoring due to prior asbestos exposure;

(b) Failing to issue recall type letters or notices to prior users;

(c) Frustrating the publication of articles on the health hazards of asbestos in literature;

(d) Rejecting the advice of other corporate officials to warn of the hazards of their asbestos products; such actions by top management officials being motivated by the possibility of adverse effects on profits;

(e) Intentional inadequacy and delay of use of warnings on asbestos products;

(f) Failing to advise users of asbestos and asbestos-containing products, such as plaintiff of medical findings known to defendants concerning the dangers of asbestos exposure;

(g) Suppressing the dissemination of information concerning the hazards of asbestos exposure to users of asbestos-containing products, such as plaintiff.

14. The foregoing deliberate, intentional and purposeful acts of the defendants were a direct and proximate cause of plaintiff's injuries and damages hereinafter described.

VI.

FIFTH CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 14 and the First, Seccond [sic], Third and Fourth Causes of Action, and incorporates the same herein.

15. That during, before and after plaintiff's exposure to asbestos products manufactured, mined, distributed, or sold by defendants, the defendants falsely represented facts, including the dangers of asbestos exposure to plaintiff in the particulars alleged in the paragraphs above, while defendants each had actual

knowledge of said dangers of asbestos exposure to persons such as plaintiff. Defendants each knew of the falsity of their representations and/or made such representations in reckless disregard of their truth or falsity.

16. The foregoing representations were material conditions precedent to plaintiff's continued exposure to asbestos-containing products and defendants each intended that plaintiff act upon the representations by continuing his exposure to the asbestos products. Plaintiff was without knowledge of the falsity of defendants' representations and rightfully relied upon those representations.

17. As a direct and proximate result of plaintiff's reliance upon defendants' false representations, plaintiff has suffered injury and damages hereinafter described.

VII.

SIXTH CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 17 and the First, Second, Third, Fourth and Fifth Causes of Action where relevant.

18. Plaintiff further alleges that at the time the defendants, and each of them, sold and/or delivered the aforesaid asbestos and asbestos related products and at the time said products were used by plaintiff in the manner and environment intended, they were in a defective condition and were unreasonably dangerous and unfit for their intended use in that they were deleterious, poisonous and highly harmful to plaintiff's body.

19. The above was the proximate cause of the severe damages sustained by plaintiff as hereinafter set forth.

VIII.

SEVENTH CAUSE OF ACTION

Plaintiff, realleges Paragraphs 1 through 19 and the First, Second, Third, Fourth, Fifth and Sixth Causes of Action and incorporates the same herein.

20. Plaintiff further alleges alternatively that he may not be able to identify some or all of the specific manufacturers of the various products containing asbestos to which he was exposed for the reason that there were a number of producers of the asbestos-containing products from which he ingested fibers during his employment.

21. There being a substantial period of time between the point of initial exposure and the point of manifestation of the asbestos-related diseases suffered by the plaintiff, it is now a difficult or impossible task to determine which Particular exposures to asbestos dust are responsible for causing the plaintiff's diseases, as such diseases sustained by the plaintiff were caused by his exposure to the fungible product of asbestos mined, distributed, manufactured, wholesaled, processed, imported, converted, compounded, and/or retailed by the named defendants.

22. Further, the named defendants are sufficient in number so as to represent a substantial share of the market such that it is probable that the culpable party or parties which produced the asbestos-containing products

to which the plaintiff was exposed, and which exposure proximately caused his illness of asbestosis, are included among the above-named defendants.

23. The above named defendants, acting together and in concert, created, promoted and adhered to an industry-wide standard of safety in the manufacture, design, selection, assembly, marketing, distribution, sale, delivery and promotion of asbestos-containing products including, but not limited to, raw and processed asbestos fiber, with such industry-wide safety standards being utterly ineffective and inadequate.

24. The plaintiff's injuries and damages complained of herein above were directly and proximately caused by exposure to asbestos-containing products produced and promoted by the defendants under and in adherence to said ineffective and inadequate industry-wide standards.

25. In light of the foregoing, the defendants are jointly and severally liable to the plaintiff herein.

(a) In the alternative, defendants herein represent a substantial share of the asbestos-containing product market in the areas within which the plaintiff was hired, employed and in the areas within which the plaintiff was exposed to asbestos products.

(b) Defendants manufactured, designed, selected, assembled, marketed, distributed, sold, supplied, delivered, and promoted asbestos-containing products of the kind and nature to which the plaintiff was exposed during the period of his employment as described herein.

26. Therefore, defendants are liable jointly and severally to the plaintiff for the injuries and damages sustained by him which were directly and proximately caused by his exposure to asbestos-containing products produced and promoted by the defendants under and in adherence to said insufficient and inadequate industry-wide standards based on the several defendants' prorated market share within the market described herein.

27. The plaintiff further alleges that the defendants, and each of them, should be found jointly and severally liable for plaintiff's damages by reason of their actions and inactions, including actions and inactions resulting from conspiratorial and concertive conduct on the part of said defendants, as alleged herein. The defendants, by virtue of their collective nondisclosure of essential information regarding the dangers of asbestos, effectively prevented the plaintiff from appreciating the dangers involved and in being able to identify the specific miners, manufacturers, sellers, and/or distributors of the particular products which caused the asbestos-related diseases from which the plaintiff currently suffers.

28. The plaintiff, based on the narrative included herein, specifically alleges joint and several liability on the part of the named defendants on the bases of the so-called "market share" and/or "enterprise" theories of liability as these theories have been adopted and applied in decisional law; and that said defendants are also liable to the plaintiff for his injuries on the basis of the theory of alternative liability.

29. As a result of the development of asbestosis and other asbestos-related diseases, the plaintiff has suffered

and sustained very serious injuries to his person requiring medical treatment.

30. The plaintiff has further suffered great pain, anxiety and mental anguish as a direct result of the aforesaid injuries.

31. The plaintiff believes that his injuries and illnesses are permanent in nature and that he will be forced to suffer same for the remainder of his life, that his enjoyment of life has been greatly impaired and, further, that his expected life span has been greatly shortened.

32. Plaintiff has been forced to incur medical expenses by way of doctor and medication bills and believes that he will be forced to incur additional expenses in an effort to treat his asbestos-related illnesses.

WHEREFORE, plaintiff prays judgment, joint and several, against the defendants for damages in an amount greater than Fifty Thousand Dollars ($50,000.00). along with an award of costs attendant to the bringing of this action.

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statute Section 549.21 Subd.2, to the party against whom the allegations in this pleading are asserted.

Dated this 6th day of February, 1990.

CRAFT, THOMPSON &
BOECHLER, P.C.
115 N. University Dr.,
Suite 1
Fargo, N.D. 58107
(701) 237-3071

By /s/ David C. Thompson
David C. Thompson
Jeanette T. Boechler
Attorneys for the Plaintiff

And /s/ Dale J. Craft
Dale J. Craft
MN Attorney Reg.
No. 19550

EXHIBIT G

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Robert Lindholm,

Plaintiff,

vs.

A.P.I. Inc., a Minnesota corporation;

Armstrong World Industries, Inc., a Delaware corporation; (individually and as successor-in-interest to Armstrong Cork Company and Keasby & Mattison Company);

Atlas Turner, Inc., a Canadian corporation;

A.H. Bennett Company, a Minnesota corporation;

Asbestos Corporation, Ltd., a Canadian corporation;

Asbestos Product Manufacturing Corporation;

Asbestospray Corporation, (individually and as successor-in-interest to Asbestos Product Manufacturing Corporation);

Carey Canada, Inc., a Canadian corporation;

Cassiar Mining Corporation, Ltd., a Canadian corporation;

7. Personal Injury

Civil No.

COMPLAINT

Trial by a Jury of Nine Persons is Hereby Demanded

The Celotex Corporation, a Delaware corporation, (as successor-in-interest to Philip Carey Manufacturing Company, Philip Carey Corporation, Briggs Manufacturing Company, Panacon Corporation, and Smith & Kanzler Co., Inc.);

Combustion Engineering, Inc., a Delaware corporation (as successor-in-interest to Refractory & Insulation Corporation, (a New Jersey corporation), R&I-Ramtite Corporation, and M.H. Detrich Co., Inc.,);

Crane Packing, Inc.;

Eagle-Picher Industries, Inc., an Ohio corporation;

Empire Ace Insulation Manufacturing Corporation, Inc., a New York corporation

Fibreboard Corporation, a Delaware corporation, (individually and as successor-in-interest to Plant Rubber and Asbestos Company, Pabco Insulation Corporation, and Fibreboard Paper Products Corporation);

Flexitallic Gasket Co., Inc., a Connecticut corporation;

Flintkote Company, a Connecticut corporation;

GAF Corporation, a Delaware corporation, (individually and as successor-in-interest to The Ruberoid Company);

Garlock, Inc., a New York corporation;

Grant Wilson, Inc., an Illinois corporation;

W.R. Grace & Co., a New Jersey corporation, (individually and as successor-in-interest to Zonolite company and Western Mineral Products Company);

A.P. Green Refractories Co., a Delaware corporation;

H & A Construction Corporation, (individually and as successor-in-interest to Asbestos Product Manufacturing Corporation, Asbestospray Corporation and Spraycraft Corporation);

Hercules Chemical Co., a New York corporation;

Keene Corporation, a Delaware corporation, (individually and as successor-in-interest to Ehret Magnesia Manufacturing Company, Baldwin-Hill Company, Baldwin-Ehret-Hill, Inc., Keene Building Products Corporation and Mundet Cork Corporation);

Lac d'Amiante du Quebec, Ltee., f/k/a, Lake Asbestos of Quebec, a Canadian corporation;

MacArthur Corporation, a Minnesota corporation;

National Gypsum Company, a Delaware corporation;

Owens-Corning Fiberglas Corp., a Delaware corporation;

Owens-Illinois, Inc., an Ohio corporation;

Pittsburgh Corning Corporation, a Pennsylvania corporation, (individually and as successor-in-interest to Unarco Industries, Inc.);

Rutland Fire & Clay, a Vermont corporation;

SEPCO Corporation, an Alabama corporation;

S.O.S. Products. a New York corporation;

Southern Textile Corporation (a subsidiary of H.K. Porter Company, a Delaware corporation and successor-in-interest to Southern Asbestos Company);

Spraycraft Corporation, (individually and as successor-in-interest to Asbestos Product Manufacturing Corporation and Asbestospray Corporation); U.S. Gypsum Co., a Delaware corporation;

Union Carbide Corporation., a New York corporation;

U.S. Mineral Products Company, (individually and as successor-in-interest to Turner & Newall, Ltd. and Keasbey & Mattison Company);

Defendants.

Plaintiff, for his Complaint herein, states and alleges as follows:

I.

JURISDICTIONAL STATEMENT

The plaintiff Robert Lindholm is a resident of Carlton County, Minnesota and brings this action for personal injury damages proximately caused by Plaintiff's exposure to asbestos fiber, the vast majority of which exposure to such asbestos fiber occurred within the State of Minnesota.

As is evidenced by the caption of the instant complaint, which is specifically incorporated herein, the defendants are foreign corporations which are amenable to jurisdiction in the courts of Minnesota by virtue of the quality of their repective [sic] direct or indirect contacts with the State of Minnesota and/or their conduct of substantial and/or systematic business in Minnesota all of which factors subject said defendants to the jurisdiction of Minnesota Court pursuant to Section 543.19 of the Minnesota Statutes Annotated. It is further alleged that these above-captioned foreign corporation defendants

own, use, or possess real or personal property situated within Minnesota and/or transact business within Minnesota and/or have committed acts outside Minnesota which have caused injury and/or property in Minnesota. It is further alleged that some or all of the foreign corporate defendants captioned herein are authorized to transact business within Minnesota and are thus subject to provisions of Section 303.09 and 303.13 of the Minnesota Statutes Annotated. Each foreign corporate defendant has either mined, manufactured, processed, imported, converted, compounded, wholesaled and/or retailed substantial amounts of asbestos and asbestos-related materials which have at legally relevant times been sold, distributed and used in Minnesota.

The Plaintiff was exposed to various asbestos-containing Products while working in various locations in Minnesota. Asbestos-related diseases are progressive, latent and insidious, and on information and belief, such exposure in Minnesota was a Proximate cause of the Plaintiff's asbestos-related disease.

Alternatively, all of the above-captioned defendants are tortfeasors which could not be joined by the Plaintiff in a single civil action in any other forum given the subject matter of the Plaintiff's claim arising from his asbestos-caused personal injury. Therefore, the above captioned court may or should exercise jurisdiction over the named defendants pursuant to the doctrine of jurisdiction of necessity.

Defendant A.H. Bennett Company, is a Minnesota Corporation, which transacts, and at all times relevant to

the causes of action pleaded herein transacted, business within Hennepin County, Minnesota.

II.

FIRST CAUSE OF ACTION

1. At all times relevant to this action, defendants and predecessors of defendants for whose actions defendants are legally responsible (herein collectively referred to as "defendants") were engaged in the manufacture and/or sale and/or distribution of asbestos-containing products and/or raw materials.

2. The defendants, acting through their agents, servants and/or employees caused certain asbestos and asbestos related materials to be placed in the stream of interstate commerce with the result that said asbestos and asbestos related materials came into use by the plaintiff.

3. Plaintiff is an insulator who, for a period of time, worked with and was exposed to the asbestos and asbestos- related materials mined, manufactured, processed, imported, converted, compounded and/or sold by the defendants, a significant portion of said exposure being within the State of Minnesota.

4. During the course and scope of his employment, Plaintiff was exposed to defendants' asbestos and asbestos-related insulation materials, which exposure directly and proximately caused him to develop the illiness of asbestosis and other asbestos-related diseases.

5. The illness and disability of the Plaintiff are the direct and proximate result of the negligence, and/or recklessness and/or willfulness of the defendants, jointly

and severally in that they produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-related materials which the defendants, and each of them, knew, or in the exercise of ordinary care, should have known were deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health.

6. The illness and disability of the plaintiff are the direct and Proximate result of the negligence, recklessness, and willfulness of the defendants, jointly and severally, in that, even though the defendants knew, or, in the exercise of ordinary care, should have known, that the asbestos and asbestos-related materials were deleterious, poisonous and greatly harmful to plaintiff's body, lungs, respiratory system, skin and health, the defendants nonetheless:

(a) Failed to advise the Plaintiff of the dangerous characteristics of their asbestos and asbestos-related products;

(b) Failed or omitted to provide the plaintiff with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliance, if, in truth, they were in any way able to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful asbestos-related materials;

(c) Failed and omitted to place any Warnings or sufficient warnings on their conttainers [sic] of said asbestos and asbestos-containing materials to warn the handlers thereof

of the dangers to health in coming in contact with said asbestos and asbestos-containing materials;

(d) Failed and omitted to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and installing said asbestos and asbestos-containing materials;

(e) Inadequately warned, if, in fact, they warned at all, persons such as plaintiff of the dangers to their health in coming in contact with and breathing said asbestos and asbestos-containing materials;

(f) Did not recommend methods to improve the work environment;

(g) Did not test its products or develop alternative products;

(h) Continued to use a known cancer causing product, to-wit: asbestos.

7. At all times relevant, it was feasible for defendants to have warned plaintiff, tested their asbestos products and/or substituted asbestos-free products.

As a result of the negligence and/or recklessness and/or willfulness of the defendants, the plaintiff has been damaged severely as is set forth below.

III.

SECOND CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 7 and the FIrst [sic] Cause of Action and incorporates the same herein.

8. The defendants, and each of them, impliedly warranted that said asbestos and asbestos-containing products were of good and merchantable quality and fit for their intended use.

9. The implied warranty made by the defendants, and each of them, that the asbestos and asbestos-containing products were of a good merchantable quality and fit for the particular intended use was breached and harmful asbestos fiber was released from those products into the atmosphere as the plaintiff carried out his duties as an insulator working with asbestos and asbestos-containing materials.

10. As a direct and proximate result of the defendants' breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, plaintiff developed the illness of asbestosis and other asbestos-related diseases.

IV.

THIRD CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 10 and the First and Second Causes of Action and incorporate the same herein.

11. Plaintiff and others in his position worked in close proximity to the asbestos and asbestos-containing materials of the defendants, and each of them, and plaintiff's presence, as well as that of others in his position, was known, or, in the exercise of reasonable care, should have been anticipated by the defendants, and each of them.

12. The defendants, and each of them, have for many years been aware of medical and scientific data which clearly indicated that asbestos and asbestos-related products were hazardous to the health and safety of the plaintiff and others in the plaintiff's position, Yet prompted by pecuniary motives, the defendants, and each of them, individually and collectively, ignored and failed to act upon said medical and scientific data, conspired to deprive the Plaintiff and the public at large of said medical and scientific data, denying the plaintiff and others similarly situated of the opportunity of free choice as to whether or not to expose themselves to the asbestos and asbestos-containing products of said defendants. As a result, the plaintiff has been severely damaged as set forth below.

V.

FOURTH CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 12 and the First, Second and Third Causes of Action and incorporates the same herein.

13. That at various times in the past, defendants had actual knowledge of the dangers to plaintiff of

asbestos exposure, but, defendants nevertheless deliberately, intentionally and purposefully withheld such information from the plaintiff, thus denying the plaintiff of the knowledge with which to take important precautionary measures such as periodic x-rays and medical examinations and avoiding further dust exposure, the specifics of defendants intentional acts being as follows:

(a) Failing to warn prior users of the need for monitoring due to prior asbestos exposure;

(b) Failing to issue recall type letters or notices to prior users;

(c) Frustrating the publication of articles on the health hazards of asbestos in literature;

(d) Rejecting the advice of other corporate officials to warn of the hazards of their asbestos products; such actions by top management officials being motivated by the possibility of adverse effects on profits;

(e) Intentional inadequacy and delay of use of warnings on asbestos products;

(f) Failing to advise users of asbestos and asbestos-containing products, such as plaintiff of medical findings known to defendants concerning the dangers of asbestos exposure;

(g) Suppressing the dissemination of information concerning the hazards of asbestos exposure to users of asbestos-containing products, such as plaintiff.

14. The foregoing deliberate, intentional and purposeful acts of the defendants were a direct and proximate cause of plaintiff's injuries and damages hereinafter described.

VI.

FIFTH CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 14 and the First, Seccond [sic], Third and Fourth Causes of Action, and incorporates the same herein.

15. That during, before and after plaintiff's exposure to asbestos products manufactured, mined, distributed, or sold by defendants, the defendants falsely represented facts, including the dangers of asbestos exposure to plaintiff in the particulars alleged in the paragraphs above, While defendants each had actual knowledge of said dangers of asbestos exposure to persons such as plaintiff. Defendants each knew of the falsity of their representations and/or made such representations in reckless disregard of their truth or falsity.

16. The foregoing representations were material conditions precedent to plaintiff's continued exposure to asbestos-containing products and defendants each intended that plaintiff act upon the representations by continuing his exposure to the asbestos products. Plaintiff was without knowledge of the falsity of defendants' representations and rightfully relied upon those representations.

17. As a direct and proximate result of plaintiff's reliance upon defendants' false representations, plaintiff has suffered injury and damages hereinafter described.

VII.

SIXTH CAUSE OF ACTION

Plaintiff realleges Paragraphs 1 through 17 and the First, Second, Third, Fourth and Fifth Causes of Action where relevant.

18. Plaintiff further alleges that at the time the defendants, and each of them, sold and/or delivered the aforesaid asbestos and asbestos related products and at the time said products were used by plaintiff in the manner and environment intended, they were in a defective condition and were unreasonably dangerous and unfit for their intended use in that they were deleterious, poisonous and highly harmful to plaintiff's body.

19. The above was the proximate cause of the severe damages sustained by plaintiff as hereinafter set forth.

VIII.

SEVENTH CAUSE OF ACTION

Plaintiff, realleges Paragraphs 1 through 19 and the First, Second, Third, Fourth, Fifth and Sixth Causes of Action and incorporates the same herein.

20. Plaintiff further alleges alternatively that he may not be able to identify some or all of the specific manufacturers of the various products containing asbestos to which he was exposed for the reason that

there were a number of producers of the asbestos-containing products from which he ingested fibers during his employment.

21. There being a substantial period of time between the point of initial exposure and the point of manifestation of the asbestos-related diseases suffered by the plaintiff, it is now a difficult or impossible task to determine which particular exposures to asbestos dust are responsible for causing the plaintiff's diseases, as such diseases sustained by the plaintiff were caused by his exposure to the fungible product of asbestos mined, distributed, manufactured, wholesaled, processed, imported, converted, compounded, and/or retailed by the named defendants.

22. Further, the named defendants are sufficient in number so as to represent a substantial share of the market such that it is probable that the culpable party or parties which produced the asbestos-containing products to which the plaintiff was exposed, and which exposure proximately caused his illness of asbestosis, are included among the above-named defendants.

23. The above named defendants, acting together and in concert, created, promoted and adhered to an industry-wide standard of safety in the manufacture, design, selection, assembly, marketing, distribution, sale, delivery and promotion of asbestos-containing products including, but not limited to, raw and processed asbestos fiber, with such industry-wide saftey [sic] standards being utterly ineffective and inadequate.

24. The plaintiff's injuries and damages complained of herein above were directly and proximately caused by

exposure to asbestos-containing products produced and promoted by the defendants under and in adherence to said ineffective and inadequate industry-wide standards.

25. In light of the foregoing, the defendants are jointly and severally liable to the plaintiff herein.

(a) In the alternative, defendants herein represent a substantial share of the asbestos-containing product market in the areas within which the plaintiff was hired, employed and in the areas within which the plaintiff was exposed to asbestos products.

(b) Defendants manufactured, designed, selected, assembled, marketed, distributed, sold, supplied, delivered, and promoted asbestos-containing products of the kind and nature to which the plaintiff was exposed during the period of his employment as described herein.

26. Therefore, defendants are liable jointly and severally to the plaintiff for the injuries and damages sustained by him which were directly and proximately caused by his exposure to asbestos-containing products produced and promoted by the defendants under and in adherence to said insufficient and inadequate industry-wide standards based on the several defendants' prorated market share within the market described herein.

27. The plaintiff further alleges that the defendants, and each of them, should be found jointly and severally liable for plaintiff's damages by reason of their actions and inactions, including actions and inactions resulting from conspiratorial and concertive conduct on the part of said defendants, as alleged herein. The defendants, by

virtue of their collective nondisclosure of essential information regarding the dangers of asbestos, effectively prevented the plaintiff from appreciating the dangers involved and in being able to identify the specific miners, manufacturers, sellers, and/or distributors of the particular products which caused the asbestos-related diseases from which the plaintiff currently suffers.

28. The plaintiff, based on the narrative included herein, specifically alleges joint and several liability on the part of the named defendants on the bases of the so-called "market share" and/or "enterprise" theories of liability as these theories have been adopted and applied in decisional law; and that said defendants are also liable to the plaintiff for his injuries on the basis of the theory of alternative liability.

29. As a result of the development of asbestosis and other asbestos-related diseases, the plaintiff has suffered and sustained very serious injuries to his person requiring medical treatment.

30. The plaintiff has further suffered great pain, anxiety and mental anguish as a direct result of the aforesaid injuries.

31. The plaintiff believes that his injuries and illnesses are permanent in nature and that he will be forced to suffer same for the remainder of his life, that his enjoyment of life has been greatly impaired and, further, that his expected life span has been greatly shortened.

32. Plaintiff has been forced to incur medical expenses by way of doctor and medication bills and believes that he will be forced to incur additional

expenses in an effort to treat his asbestos-related illnesses.

WHEREFORE, plaintiff prays judgment, joint and several, against the defendants for damages in an amount greater than Fifty Thousand Dollars ($50,000.00), along with an award of costs attendant to the bringing of this action.

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statute Section 549.21 Subd.2, to the party against whom the allegations in this pleading are asserted.

Dated this 6th day of February, 1990.

CRAFT, THOMPSON &
BOECHLER, P.C.
115 N. University Dr.,
Suite 1
Fargo, N.D. 58107
(701) 237-3071

By /s/ Jeanette T. Boechler
David C. Thompson
Jeanette T. Boechler
Attorneys for the Plaintiff

And /s/ Dale J. Craft
Dale J. Craft
MN Attorney Reg. No. 19550

EXHIBIT H

AFFIDAVIT OF ROLAND P. GAGNON

PROVINCE OF QUEBEC)

DISTRICT OF BEDFORD)

ROLAND P. GAGNON, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am the former Senior Vice President-Marketing of Lac d'Amiante du Quebec, Ltee (formerly known as "Lake Asbestos of Quebec, Ltd." and hereinafter referred to as "LAQ"). From May 19, 1976 to July 26, 1982, I was the Vice President in charge of sales and marketing for LAQ. From 1965 to May 19, 1976, I was Director of Sales for LAQ. I was employed by LAQ beginning in 1957. During the period 1957 to 1965, as LAQ's Traffic Manager and in related positions, I was involved in and familiar with the LAQ sales business. As Senior Vice President-Marketing and by virtue of my other services for and on behalf of LAQ, I have personal knowledge of the matters stated herein.

2. LAQ is a non-resident corporation and at all relevant times had its offices and principal place of business in Black Lake, Province of Quebec, Dominion of Canada.

3. LAQ was incorporated on September 17, 1952. It was a newly incorporated entity and assumed neither the rights nor the liabilities of any predecessor corporation, partnership or other business entity at the time of its incorporation.

4. LAQ only mined, milled and sold raw asbestos fiber, having begun to mine asbestos in commercial quantities with the official opening of the mine and mill at Black Lake, Quebec in July, 1958, and with its first commercial sales taking place shortly thereafter. All sales of raw asbestos fiber were made F.O.B., Province of Quebec, Canada.

5. LAQ has never manufactured, produced, sold or distributed any asbestos-containing products.

6. LAQ has never advertised its asbestos fiber in any Minnesota media, i.e., radio, television or the press.

7. LAQ has never maintained an office in the State of Minnesota and has not employed and does not now employ any officers, or employees in the State of Minnesota.

8. LAQ has never been a corporation organized or existing under the laws of Minnesota and has never had a subsidiary company doing business in the State of Minnesota.

9. LAQ has never been registered with the State of Minnesota as a foreign corporation doing business in the state.

10. LAQ has never appointed or authorized any agent to accept process for suit in the State of Minnesota.

11. LAQ has never been listed or applied for a listing in any telephone directory in the State of Minnesota. LAQ has never maintained telephones in the State of Minnesota, nor has it ever had a Minnesota mailing address.

12. LAQ has never paid or been obligated to pay any taxes or fees in the State of Minnesota.

13. LAQ has never maintained any books or records in the State of Minnesota.

14. LAQ has never maintained any bank accounts or owned or leased any real or personal property in the State of Minnesota. It has never owned or rented any warehouse or storage facility in the State of Minnesota.

15. LAQ is now known as Lac d'Amiante du Quebec, Ltee and has always been known by that name or as Lake Asbestos of Quebec, Ltd. It has never done business or been known under any other name, title, or description.

16. LAQ has never instituted any lawsuit in the State of Minnesota, nor has it otherwise sought to avail itself of the privileges and benefits of citizenship in the State of Minnesota.

17. Based on my personal knowledge and a review of LAQ's sales records, I have determined that LAQ never engaged in any continuing course of business activity in the State of Minnesota. However, I can relate the following:

a. With the exception of some isolated sales of raw asbestos fiber made in Canada, F.O.B. Black Lake, Quebec, to a Ruberoid plant in Minneapolis between 1959 and 1963, LAQ had no raw asbestos fiber sales whatsoever to Minnesota customers and no sales of raw asbestos fiber into the State of Minnesota. Other than the actual limited shipments, LAQ's only dealings were with Ruberoid's central purchasing office in New York and not

with anyone in Minnesota. It is my understanding that Ruberoid used this fiber to manufacture asphalt-based roof materials in which the asbestos fibers were encapsulated and non-respirable.

b. Although LAQ dealt with a sales representative in Minnesota in the mid-1960s, that representative did not produce a single customer to whom LAQ sold fiber. LAQ thus made no sales of raw asbestos fiber in Minnesota or to Minnesota customers either through or with the assistance of this or any other sales representative, agent or distributor at any time.

c. LAQ personnel corresponded with the 3M Company five times between May of 1962 and November of 1964 with regard to the potential sale of raw asbestos fiber; however, despite one visit by an LAQ salesman to 3M in St. Paul in 1963, no sales were ever consummated. A letter to 3M in St. Paul enclosing a price list was sent in April of 1970 in response to a 3M request and subsequent letters in December of 1974 and October 1976 were sent, but again no sales were ever consummated.

/s/ Roland P. Gagnon
Roland P. Gagnon

Sworn to and subscribed
before me this day 14th
of May, 1990.

/s/ Joanne Levesque
Commissioner of Oaths (Seal)

Supreme Court, U.S.
FILED
MAR 16 1992
OFFICE OF THE CLERK

(2)

No. 91-1260

In The

Supreme Court of the United States

October Term, 1991

LAC D'AMIANTE DU QUEBEC, LTEE,

Petitioner,

v.

STANLEY STANEK and ROBERT LINDHOLM,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeals Of Minnesota

BRIEF IN OPPOSITION

DAVID C. THOMPSON
(Counsel of Record)
CRAFT, THOMPSON & BOECHLER, P.C.
16 North Broadway, Suite 315
P.O. Box 1932
Fargo, ND 58107-1932
(701) 237-3071
Attorney for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Should this Court review a decision of the Minnesota Court of Appeals, which decision was itself denied review by the Minnesota Supreme Court, denying a motion for dismissal by the petitioner asbestos mining company on purported personal jurisdiction grounds, where that mining company had directly supplied asbestos fiber to a Minnesota plant operated by a co-defendant company to whose asbestos products the respondents were exposed, and where the movant asbestos mining company had a number of other significant contacts with the forum state of Minnesota?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT 1

REASONS FOR DENYING THE PETITION 4

I. The Court of Appeals Knowingly Decided These Consolidated Cases With Full Awareness Of The Supreme Court's Decision In *Asahi Metal* And Specifically Harmonized Its Holding With That Of The Supreme Court Plurality In That Case 5

II. The Minnesota Court Of Appeals Did Not Ignore The Distinction Between "Specific" And "General" Personal Jurisdiction 7

CONCLUSION 9

TABLE OF AUTHORITIES

Page

CASES:

Asahi Metal Indus. Co. v. Superior Court of Calif, 480 U.S. 107 (1987) ..... *passim*

Stanek v. A.P.I., Inc., 474 N.W. 2d 829 (Minn. App. 1991), review denied, (Minn. October 31, 1991) 2, 4, 6, 8, 9

Rostad v. On-Deck, Inc., 372 N.W.2d 717 (Minn. 1985), cert. denied 474 U.S. 1006 (1985) 4

STATUTES:

M.S.A. §543.19 3

No. 91-1260

In The

Supreme Court of the United States

October Term, 1991

LAC D'AMIANTE DU QUEBEC, LTEE,

Petitioner,

v.

STANLEY STANEK and ROBERT LINDHOLM,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeals Of Minnesota

BRIEF IN OPPOSITION

STATEMENT

Petitioner Lac d'Amiante du Quebec (LAQ) is an asbestos mining company incorporated in the State of Delaware which shipped its asbestos fiber products directly to a Ruberoid Company plant in Minneapolis, Minnesota, between 1959 and 1963. These are years relevant to the causes of action in the instant consolidated Minnesota state court asbestos personal injury cases because these years are among those in the period during which the respondents were exposed to Ruberoid brand asbestos-containing products.

As the Minnesota Court of Appeals explained below:

> LAQ did sell raw asbestos fiber, "F.O.B. Black Lake, Quebec," to a Ruberoid plant in Minneapolis between 1959 and 1963. LAQ dealt with a Minnesota sales representative in the mid-1960s. LAQ corresponded with 3M Company five times between May 1962 and November 1964 regarding the potential sale of raw asbestos fiber, and an LAQ salesman visited 3M in St. Paul in 1963. LAQ mailed price lists to 3M in 1970, 1974 and 1976.

Stanek v. A.P.I., Inc., et. al., 474 N.W.2d 829, 831 (Minn. App. 1991), review denied, October 31, 1991.

Indeed, the successor-in-liability to the Ruberoid Company, GAF Corporation, is a defendant joined by the respondents in the instant cases on the basis of its successorship to the asbestos-related liability of Ruberoid. (Petition Appendix, Exhibit F. App. 46).

LAQ also had a number of other indirect marketing contacts with Minnesota.

As the Minnesota Court of Appeals also observed in this case:

> LAQ has supplied raw asbestos fiber to a number of manufacturers, including Armstrong World Industries; Fiberboard Corporation; H.K. Porter Company, Inc.; Owens-Corning Fiberglas Corporation; Raybestos Manhattan (a/k/a Raymark); United States Gypsum Company; and United States Mineral Products Company . . . (d)eposition testimony indicates that LAQ was a major supplier of Canadian asbestos to the United States market.

Stanek v. A.P.I., Inc., et. al., supra, 474 N.W.2d at 831.

Therefore, LAQ was a major asbestos fiber mining company which distributed its product to various national asbestos product manufacturers through the stream of commerce to such a degree that it was reasonable to infer that LAQ intended through this marketing scheme to serve Minnesota markets, either through the marketing of its asbestos as a component part of a finished product or of that asbestos in its raw form.

LAQ thus had both substantial *direct and indirect contacts* with Minnesota such that a substantial connection existed between it and the forum whereby the exercise of personal jurisdiction over LAQ by the Minnesota court was consistent with the principles of fair play and substantial justice required by the Due Process Clause.

The respondents are Minnesota residents who used and were exposed to the asbestos and asbestos-containing products mined, manufactured, and distributed by petitioner LAQ while they were working in Minnesota. As a result of this exposure, these plaintiffs sustained personal injuries in the form of asbestos-caused pulmonary disease, cancer, and resultant disability.

The trial court denied LAQ's motion to dismiss on personal jurisdiction grounds, finding that LAQ had a great deal "more than a simple general knowledge that its product might show up in Minnesota some day." See Trial Court Memorandum at 3 (Petition Appendix, Exhibit C, App. 23-24).

LAQ subsequently pursued its right to an interlocutory appeal. The Court of Appeals of Minnesota in turn affirmed the trial court's holding that LAQ was amenable to Minnesota jurisdiction by virtue of M.S.A. §543.19, and

that sufficient minimum contacts were established at this pre-trial stage to satisfy Due Process considerations under the doctrine set forth in the plurality decision of the United States Supreme Court in *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 107 (1987), and in the Minnesota Supreme Court's unanimous decision in *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717, 719-722 (Minn. 1985), *cert. denied* 474 U.S. 1006 (1985). See *Stanek v. A.P.I., Inc., et. al.*, 474 N.W.2d 829, 833-834 (Minn. App. 1991), review denied by the Minnesota Supreme Court by order of October 31, 1991.

In its holding, the Minnesota Court of Appeals concluded that *LAQ had both direct contacts and indirect contacts* through the stream of commerce with Minnesota which together caused petitioner LAQ to have sufficient minimum contacts to satisfy Due Process principles. *Stanek, supra,* 474 N.W.2d at 832-835.

REASONS FOR DENYING THE PETITION

Petitioner LAQ characterizes the instant consolidated cases as providing the Supreme Court with an opportunity to resolve that which constitutes "purposeful availment" in a stream-of-commerce product liability setting. However, as is explained above, LAQ had important and substantial *direct* contacts with the State of Minnesota. These *direct* contacts were certainly referenced by the Court of Appeals of Minnesota and were necessarily comprehended by that court as a foundational basis for its decision. *Stanek v. A.P.I., Inc., et. al., supra,* 474 N.W.2d at 831-835.

As a result, the facts in the instant consolidated cases do not provide a clean and clear opportunity for this court to revisit and further develop the doctrine set forth in the plurality decision of the court in *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 102 (1987), specifically the "purposeful availment" analysis of the plurality in that case.

In consequence, and contrary to the manner in which petitioner LAQ incorrectly characterizes the instant consolidated cases, LAQ did indeed have *specific direct contacts* with Minnesota. Because of this fact, the instant case is nothing more than a garden variety personal jurisdiction case in which *direct* contacts of a particular defendant are present showing obvious and purposefully directed actions toward the forum State of Minnesota. Certainly this case does not present the novel opportunity for this court to further develop the "purposeful availment" analysis of the plurality in *Asahi Metal* that petitioner LAQ claims that it does.

I. THE COURT OF APPEALS KNOWINGLY DECIDED THESE CONSOLIDATED CASES WITH FULL AWARENESS OF THE SUPREME COURT'S DECISION IN *ASAHI METAL* AND SPECIFICALLY HARMONIZED ITS HOLDING WITH THAT OF THE SUPREME COURT PLURALITY IN THAT CASE.

LAQ's central argument in support of its petition is that this case presents the Supreme Court with an opportunity to resolve "the turmoil which has ensued from *Asahi.*" Petition at 10. That turmoil, according to LAQ, revolves around whether "mere awareness" on the part

of a foreign defendant that its products would reach the forum state constitutes sufficient minimum contacts to form the basis for an exercise of personal jurisdiction. *Id.* at 12-22. The plurality in *Asahi* held that "something more" than mere awareness is required to exercise personal jurisdiction over a foreign defendant. *Asahi Metal, supra,* 480 U.S. at 112.

Contrary to these assertions by LAQ, however, the Minnesota Court of Appeals did *not* "intentionally reject" the standard enunciated by the *Asahi* plurality in favor of a mere awareness test. To the contrary, the Minnesota court reasoned that LAQ's direct contacts with the state constituted the "something more" required by the *Asahi* plurality. *Stanek v. A.P.I., Inc., et. al., supra,* 474 N.W.2d at 833-834. Although the Minnesota Court of Appeals did state that the *Asahi* plurality's standard was not binding on it, the court went on to say that, "(h)aving said this, it is evident that there is 'quite a bit more' contact with the forum state as presented here." *Id.* at 834. The court then recited LAQ's purposeful and direct contacts with Minnesota, concluding that the quantity and quality of LAQ's contacts with Minnesota were sufficient for the exercise of personal jurisdiction over LAQ. *See Id.*

In actuality, the Minnesota Court of Appeals even utilized the standard enunciated by the *Asahi* plurality, and found that this standard was met with respect to LAQ. *Id.* at 833-834. This case, therefore, does not present the Supreme Court with an opportunity to clarify whether "mere placement of raw materials into the stream of commerce . . . constitutes purposeful availment" within the meaning of *Asahi.* Petition at i. Neither does the instant case present to this court the question of

whether "the Minnesota courts (may) intentionally reject the Court's decision in *Asahi*." *Id.*

Because the analytical framework utilized by the Minnesota Court of Appeals was entirely consistent with that employed by the *Asahi* plurality, there is no reason to grant review on the grounds urged by LAQ. To the extent this Court is concerned about any "turmoil" such as that which LAQ claims has resulted from the splintered decision in *Asahi*, it is submitted that this Court should grant review of a case in which a lower court has expressly embraced the standard articulated by Justice Brennan in his *Asahi* concurrence. The instant case is not, however, such a case.

II. THE MINNESOTA COURT OF APPEALS DID NOT IGNORE THE DISTINCTION BETWEEN "SPECIFIC" AND "GENERAL" PERSONAL JURISDICTION.

Equally without merit is the additional argument advanced by petitioner LAQ to the effect that review by this court is warranted because the Minnesota Court of Appeals allegedly "ignored the distinctions between specific and general jurisdiction." Petition at 22. This claim by LAQ, reduced to its essentials, is that the Minnesota Court of Appeals erred in looking to prior contacts between LAQ and the State of Minnesota which supposedly had no relation to the causes of action implicated in the instant consolidated cases. Such contacts, argues LAQ, lack the requisite "nexus" with the present action to form the basis for an exercise of specific personal jurisdiction.

In making these observations, however, LAQ seriously mischaracterizes the Minnesota Court of Appeals holding as well as the record of this case. As stated above, the respondents in the instant consolidated cases have all named GAF Corporation as a defendant "as successor-in-interest to the Ruberoid Company". See Petition Exhibit F, App. 46 and Exhibit G. App. 64.

Indeed, the respondents have specifically assigned liability to the Ruberoid Company and to its successor GAF Corporation for their asbestos-related injuries. Petitioner LAQ does not dispute the fact that it shipped raw asbestos fiber directly to the Ruberoid plant in Minneapolis, Minnesota, between 1959 and 1963, years during which the respondents were exposed to Ruberoid-brand asbestos products. See also *Stanek v. A.P.I., Inc., supra,* 474 N.W.2d at 831.

Certainly this activity by petitioner LAQ constitutes a substantial connection between LAQ and the forum State of Minnesota which action, by its very nature, was purposefully directed to the forum state. *Asahi Metal Indus. Co. v. Superior Court, supra,* U.S. at 108-113, 116.

As the Minnesota Court of Appeals explained in the instant case:

> According to four justices in *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 102, 112, 107 S.Ct. 1026, 1032, 94 L.Ed.2d 92 (1987), "something more" than the defendant's act of placing the product in the stream of commerce is required to satisfy due process . . .
>
> Having said this, it is evident that there is "quite a bit more" contact with the forum state as

> presented here. LAQ made direct sales in Minnesota from 1959 to 1963. It has solicited business in Minnesota. More specifically, an LAQ sales representative visited Minnesota in the mid-1960's; it mailed soliciting correspondence to 3M Company's Minnesota plant in 1963; and it mailed price lists to 3M Company in 1970, 1974 and 1976.
>
> 474 N.W.2d at 833-834.

From consideration of this language from the Minnesota Court of Appeal's decision in the instant case, it is clear that this state court was fully aware of the "something more" requirement articulated by the plurality in *Asahi Metal*. In this context, the suggestion by petitioner LAQ that this is a pure stream-of-commerce case is clearly incorrect.

Similarly, the contention by LAQ that its contacts with the State of Minnesota were unrelated to the causes of action in the instant case is equally erroneous in light of the respondents' exposures to asbestos-containing products manufactured by the Ruberoid Company, for whose plant LAQ supplied asbestos fiber from 1959 through 1963. Clearly, the prior contacts at issue here are *not* unrelated to the present action.

III. CONCLUSION

In summary, the legal questions presented by LAQ in the instant case are hardly sufficiently important to warrant review. Contrary to LAQ's claim, the Minnesota Court of Appeal's decision is analytically consistent with

Asahi. It is clear that LAQ's prior contacts with Minnesota do indeed constitute the "something more" envisioned by the *Asahi* court.

In any event, the facts in the instant case do not present the kind of pure stream-of-commerce product liability setting which petitioner LAQ claims does exist. It is submitted that if this court wishes to further develop the doctrine set forth by the plurality in *Asahi Metal*, the instant case, given the *direct* contacts by petitioner LAQ with the forum State of Minnesota, does not provide the appropriate vehicle for expanding upon the plurality decision in *Asahi Metal*.

Respectfully submitted,

DAVID C. THOMPSON
(Counsel of Record)
CRAFT, THOMPSON & BOECHLER, P.C.
16 North Broadway, Suite 315
P.O. Box 1932
Fargo, ND 58107-1932
(701) 237-3071
Attorney for Respondents

(3)

No. 91-1260

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In The

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October Term, 1991

LAC D'AMIANTE DU QUEBEC, LTEE,

Petitioner,

v.

STANLEY STANEK and ROBERT LINDHOLM,

Respondents.

Petition For Writ Of Certiorari
To The District Court Of Appeals
Of The State Of Minnesota, Fourth District

REPLY BRIEF

MYRON J. BROMBERG, ESQ.
Counsel of Record

CYNTHIA D. RICHARDSON, ESQ.
On the Brief

PORZIO, BROMBERG & NEWMAN, P.C.
163 Madison Avenue
Morristown, New Jersey 07962-1997
Telephone: (201) 538-4006
Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

ARGUMENT 1

I. RESPONDENTS' ARGUMENT MUST FAIL BECAUSE IT WAS NEITHER RAISED NOR CONSIDERED BELOW 1

II. RESPONDENTS' CLAIM THAT THERE IS A NEXUS BETWEEN LAQ'S LIMITED DIRECT CONTACTS WITH THE FORUM AND THE PRESENT MATTERS IS COMPLETELY LACKING IN MERIT 3

III. RESPONDENTS HAVE FAILED TO REFUTE THE REASONS SET FORTH IN LAQ'S PETITION FOR THE GRANT OF CERTIORARI REVIEW 4

CONCLUSION 7

TABLE OF AUTHORITIES

Page

Air Courier Conf. v. Postal Workers, ___ U.S. ___, 112 L.Ed.2d 1125 (1991) 2

Asahi Metal Indus. v. Superior Court of California, 480 U.S. 102 (1987) 1, 5, 6

Hallie v. Eau Claire, 471 U.S. 34 (1985) 2

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984) 5, 6

Stanek v. A.P.I., Inc., 474 N.W.2d 829 (Minn. Ct. App. 1991), *review denied*, C8-91-493, CX-91-518 (Minn. Oct. 31, 1991) 2, 5

ARGUMENT

Respondents' brief in opposition to Lac d'Amiante du Quebec, Ltee's ("LAQ") Petition for a Writ of Certiorari purports to state two reasons for denying LAQ's Petition: (1) the case does not present a pure stream of commerce situation; thus, the Minnesota Court of Appeals decision is in agreement with *Asahi*; and (2) the Minnesota court did not confuse the separate doctrines of specific and general jurisdiction. Both grounds asserted by respondents, however, rely entirely on a factual argument which has never been raised or addressed below – that LAQ's historical, direct contacts with the forum are somehow connected to the present matters. (Respondents' Brief in Opposition at 1-2, hereinafter "RB"). That argument is not only improper, inasmuch as it is not part of the record below, it is also completely without merit.

I. RESPONDENTS' ARGUMENT MUST FAIL BECAUSE IT WAS NEITHER RAISED NOR CONSIDERED BELOW.

Respondents claim that LAQ's limited shipments to a Ruberoid plant in Minnesota are related to the present causes of action. (RB at 1). Respondents raise this argument for the first time in their brief in opposition to LAQ's Petition for Certiorari Review. Although respondents intimate that the Court of Appeals of Minnesota adopted this view in its opinion, (RB at 4), the fact remains that neither the Minnesota Court of Appeals, nor the Minnesota District Court, determined that LAQ's Ruberoid shipments were in any way connected to the present actions.

Nowhere in respondents' brief do they cite to a single place in the record where their nascent argument is even addressed by the Minnesota courts. Instead, respondents imply that the issue was addressed by pointing out that LAQ's historical "*direct* contacts were certainly referenced by the Court of Appeals . . . " (RB at 4). Indeed, respondents emphatically argue throughout their brief that the appellate court found that LAQ "*had both direct contacts and indirect contacts*" with the forum (RB at 3), as if repeating and italicizing the point will somehow demonstrate a nexus between the direct contacts and respondents' claims.

Contrary to respondents' argument, however, the appellate court did not determine that LAQ's minimal past shipments to the Ruberoid plant were in any way connected to the present actions. Rather, it is clear from the language of the Court of Appeals' decision that the court and the parties assumed, properly, that respondents' alleged injuries did *not* arise out of or relate to LAQ's direct contacts with the forum. The entire focus of the court's jurisdictional analysis was that "[p]urposeful availment may be established, like quantity of contacts, through a stream-of-commerce theory." *Stanek v. A.P.I., Inc.*, 474 N.W.2d 829, 834 (Minn. Ct. App. 1991), *review denied*, C8-91-493, CX-91-518 (Minn. Oct. 31, 1991).

This Court has consistently held that an argument which has not been presented or considered by the lower courts in deciding an issue should not be considered on review. *See, e.g., Air Courier Conf. v. Postal Workers*, ___ U.S. ___, 112 L.Ed.2d 1125, 1135 (1991); *Hallie v. Eau Claire*, 471 U.S. 34, 42 n.5 (1985). Accordingly, respondents' argument that LAQ's direct contacts are related to

the present actions should not be considered by this Court in its determination of whether to grant certiorari review.

II. RESPONDENTS' CLAIM THAT THERE IS A NEXUS BETWEEN LAQ'S LIMITED DIRECT CONTACTS WITH THE FORUM AND THE PRESENT MATTERS IS COMPLETELY LACKING IN MERIT.

In addition to the fact that respondents' argument was not raised below, there is absolutely no evidence to support the contention that a link exists between respondents' alleged injuries and LAQ's Ruberoid shipments, either in the record below or in respondents' submission to this Court. In fact, it would have been impossible for the Minnesota Court of Appeals to reach the conclusion suggested by respondents inasmuch as the only evidence presented to the court on this issue showed that "Ruberoid used [LAQ's] fiber to manufacture asphalt-based roof materials in which the asbestos fibers were encapsulated and non-respirable." (Pet. App. at 84). Thus, unless respondents had been employed at Ruberoid and had worked in the manufacture of the roof materials, they could not have been exposed to the fiber sold to the Ruberoid plant.[1] As noted by LAQ in its petition,

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[1] Because the fiber was encapsulated and non-respirable, respondents could not have been injured by exposure to the end product roofing material. Moreover, no plaintiff has alleged exposure to asphalt-based roof materials during the time that LAQ supplied fiber to the Minnesota Ruberoid plant. In fact, only one plaintiff has claimed any exposure to roof

(Continued on following page)

respondents do not allege to have worked at the Ruberoid plant; nor do they assert that they have been exposed to raw asbestos fiber.

Respondents' reference to the fact that GAF Corporation is a defendant in these matters as a successor-in-interest to Ruberoid is of no moment. That point would have significance only if respondents had shown, and the appellate court had determined, that LAQ's limited shipments to Ruberoid were somehow related to respondents' actions. As demonstrated above, however, the appellate court never made such a determination and, moreover, no evidence of such a nexus exists.

III. RESPONDENTS HAVE FAILED TO REFUTE THE REASONS SET FORTH IN LAQ'S PETITION FOR THE GRANT OF CERTIORARI REVIEW.

Respondents' brief relies solely on the argument that LAQ's direct contacts with the forum are related to their claims. In the absence of that argument, the points raised in respondents' opposition collapse. Accordingly, respondents have failed to refute any of the reasons articulated in LAQ's Petition for the grant of certiorari review.

To begin with, respondents assert that the Minnesota Court of Appeals' decision is "analytically consistent"

(Continued from previous page)

materials, and that alleged exposure occurred during the time period from 1947 to the early 1950's. (*See* highlighted portions of the deposition of respondent McGregor, annexed hereto as Exh. AA, App. 1). LAQ's first shipment of fiber to the Ruberoid plant did not occur until 1959.

with *Asahi Metal Indus. v. Superior Court of California*, 480 U.S. 102 (1987). (RB at 9-10). Respondents' attempt to demonstrate harmony between the Court of Appeals' decision and *Asahi*, however, hinges on their argument that there is a link between LAQ's direct contacts with the forum and their actions. Thus, respondents argue that LAQ's prior contacts constitute the "something more" required by the *Asahi* plurality opinion. (RB at 8-9).

Absent a nexus between the forum-related contact and the cause of action, however, the "something more" requirement of *Asahi* cannot be satisfied by LAQ's minimal past contacts. Those contacts are only relevant to a general jurisdiction analysis and may not be considered in a determination of long-arm jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984).

The Minnesota Court of Appeals' decision was clearly an analysis of whether the forum could properly assert long-arm personal jurisdiction over LAQ. *Stanek*, 474 N.W.2d at 832. The appellate court never concluded that it could assert general jurisdiction over LAQ. Moreover, the Court of Appeals specifically articulated a stream-of-commerce theory which would permit the assertion of jurisdiction over a nonresident based on mere awareness that its product might reach the forum through the stream-of-commerce, in direct conflict with the *Asahi* plurality decision. *Id.* at 833-34.

Respondents do not dispute in their opposition that it would be improper for a court to rely on contacts which are unrelated to a cause of action in connection with a long-arm jurisdiction analysis. Instead, they attempt to

create a nexus between LAQ's past contacts with the forum and their own causes of action. As discussed above, that attempt must fail and, accordingly, respondents' efforts to harmonize the Court of Appeals' decision and *Asahi* must also fail.

Respondents' only other argument is that the Minnesota Court of Appeals did not ignore the distinction between "specific" and "general" jurisdiction. That argument similarly crumbles with the destruction of the underlying attempt to demonstrate a connection between the forum-related activity and respondents' causes of action.

This Court has repeatedly observed that a forum may invoke specific jurisdiction only when plaintiff's claim "arises out of or relates to" defendant's contacts with the forum. *E.g., Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984). The Court of Appeals did not determine that respondents' claims arose out of or related to LAQ's limited shipments of fiber to the Minnesota Ruberoid plant. The only contact cited by the Court of Appeals which is relevant to a specific jurisdiction analysis was LAQ's "sales to large American distributors" which it held "suggest[ed] contacts sufficient in nature and quality so that a reasonable inference may be drawn from the character of the business." 474 N.W.2d at 834-35. Respondents' intimation that other contacts could have properly entered into analysis is improper and lacks any evidential support.

Distilled to its essence, respondents' opposition is nothing more than a desperate attempt to muddy, rather than address, the clear legal issues set forth in LAQ's

petition by improperly raising incipient and meritless factual issues. Despite respondents' unsupported and untimely argument, however, the reasons for granting LAQ's petition remain clear – this case presents a clear opportunity for this Court to define the "purposeful availment" element of a personal jurisdiction analysis in a stream-of-commerce situation.

CONCLUSION

For the foregoing reasons, and those set forth in LAQ's Petition, LAQ respectfully prays that this Court grant its Petition for Writ of Certiorari.

Respectfully submitted,

MYRON J. BROMBERG, ESQ.
Counsel of Record

CYNTHIA D. RICHARDSON, ESQ.
On the Brief

PORZIO, BROMBERG & NEWMAN, P.C.
163 Madison Avenue
Morristown, New Jersey 07962-1997
Telephone: (201) 538-4006
Attorneys for Petitioner

Dated: March 26, 1992

EXHIBIT AA

STATE OF MINNESOTA	IN DISTRICT COURT
COUNTY OF KOOCHICHING	NINTH JUDICIAL DISTRICT

Wilfred McGregor,
Plaintiff,

vs.

American Brake and Block, a Delaware Corp.,

American Crane National, a Minnesota Corp.,

Anchor Packing Co., a Delaware Corp.,

Asbestos Corp. Ltd., a Canadian Corp.,

Asbestos Product Manufacturing Corp.,

Asbestospray Corporation, Individually and as Successor in Interest to Asbestos Product Manufacturing Corp., a New York Corp.,

Atlas Turner, Inc., a Canadian Corp.,

Bell Asbestos Mines, Ltd., a Canadian Corp.,

A. H. Bennett Company, a Minnesota Corp.,

Calaveras Asbestos, Co.,
a California Corp.,

Carey Canada, Inc.,
a Canadian Corp.,

Cassiar Asbestos Corp., Ltd.,
a Canadian Corp.,

The Celotex Corp.,
a Delaware Corp.,

A. W. Chesterton Company,
a Massachusetts Corp.,

Chicago Fire Brick Co.,
a Delaware Corp.,

Combustion Engineering, Inc.,
a Delaware Corp.,

John Crane, Inc.,
a Delaware Corp.,

Crown Cork & Seal Co., Inc.,
a Delaware Corp.,

Crown Iron Works,
a Delaware Corp.,

M. H. Detrick Company,
a Delaware Corp.,

Eagle-Picher Industries, Inc.,
an Ohio Corp.,

Empire-Ace Insulation Mfg. Corp.,
a New York Corp.,

Fibreboard Corporation,
a Delaware Corp.,

Flexitallic Gasket Co., Inc.,
a Connecticut Corp.,

Flintkote Company,
a Connecticut Corp.,

GAF Corporation,
a Delaware Corp.,

Garlock, Inc.,
a New York Corp.,

W. R. Grace,
a New York Corp.,

The Jamar Company,
a Minnesota Corp.,

Kaiser Aluminum &
Chemical Corp.,
a Delaware Corp.,

Keene Corp.,
a Delaware Corp.,

Lake Asbestos of Quebec, Ltd.,
a Delaware Corp.,

MacArthur Co.,
a Minnesota Corp.,

Mobile Oil Corp.,
a New York Corp.,

National Gypsum Co.,
a Delaware Corp.,

Owens-Corning Fiberglas Corp.,
a Delaware Corp.,

Owens-Illinois, Inc.,
an Ohio Corp.,

Pittsburgh Corning Corporation,
a Pennsylvania Corp.,

H. K. Porter Co., Inc.,
a Delaware Corp.,

H. H. Robertson Company,
a Pennsylvania Corp.,

Stebbins Engineering and
Manufacturing Co.,
a New York Corp.,

Turner Asbestos Fibres, Ltd.,

Turner & Newall; PLC,

Union Carbide Corp.,
a New York Corp.,

United States Gypsum Co.,
a Delaware Corp.,

Defendants.

[p. 4] DEPOSITION of WILFRED McGREGOR, taken on the 23rd day of October, 1990, commencing at approximately 9:00 a.m., at the Holiday Inn, Highway 11 East, International Falls, Minnesota 56649, before Pamela A. Cook, a Notary Public in and for the County of Sherburne, State of Minnesota, taken pursuant to Notice.

* * *

APPEARANCES:

On Behalf of MacArthur Company:
Jon P. Parrington, Esquire
Pustorino, Pederson, Tilton &
Parrington
4500 West 65th Street, Suite 200
Minneapolis, MN 55435

On Behalf of John Crane, Inc.:
Peter M. Banovetz, Esquire
Gilmore, Aafedt, Forde,
Anderson & Gray
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402

On Behalf of Lake Asbestos of Quebec, Ltd. and Garlock, Inc.:
Patricia A. Burke, Esquire
Rider, Bennett, Egan & Arundel
2000 Lincoln Centre
333 South Seventh Street
Minneapolis, MN 55402

On Behalf of Keene Corp. and H. K. Porter Co., Inc.:
Sean M. Quinn, Esquire
919 Lumber Exchange Building
Ten South Fifth Street
Minneapolis, Minnesota 55402

On Behalf of Empire-Ace Insulation Manufacturing Corp.:
Michael B. Padden, Esquire
Cousineau, McGuire, Shaughnessy &
Anderson
600 Travelers Express Tower
1550 Utica Avenue South
Minneapolis, MN 55416

* * *

[p. 31] sometimes take it off the kilns.

Q Okay. You talk about loading it. You're talking once the product is finished being made?

A Yes.

Q You're taking it off the process and putting it in some kind of cars or something?

A Yes, box cars.

Q Do you believe you had any exposure to any kind of asbestos products doing that?

A Well, there was asbestos pipes around and the Insulite kilns but there was a lot of –

Q Did you work in the kilns at all?

A I've worked on top.

Q Doing what?

A Repair them.

Q Repairing the kilns?

A With a bricklayer.

Q With a what, sir?

A A bricklayer.

Q Okay. This is not back in 1946 though?

A No.

Q In 1946 did you do any work on the kilns?

A No.

Q Did you do any work with any kind of insulation product in 1946?

[p. 32] A No.

Q Then after you were done working for Insulite, what was your next job for Mando?

A In the yard.

Q And what did you do in the yard crew?

A Well, I did different jobs. And when somebody needed, you know, another man, why they'd call us.

Q Would the yard crew generally be what I would call general labor?

A Well, yeah, but a labor pool.

Q A labor pool?

A Yeah.

Q And where they had a need in the plant is where you would be sent?

A Yes.

Q How long did you remain a part of the yard crew?

A About three, four years.

Q And then what was the next job?

A Mason helper.

Q And then you became a mason?

A Helper.

Q Didn't you eventually become a mason?

A No.

Q You remained a bricklayer helper until you retired?

A Yes.

[p. 33] Q And you started a bricklayer helper in what year, approximately?

A Early '50s.

Q Let me talk about the time from when you started as a laborer with the yard crew up until when you started as a mason helper. I want to deal with while you were working on the yard crew. Okay? While you were doing that, did you ever at any time actually put insulation on anything?

A Well, I worked with bricklayers before I got on steady, when they needed it.

Q Other than working with the bricklayers, would you work with any asbestos products?

A No.

Q The only time you would have exposure to asbestos insulation products that you know of would be when you would work either with the bricklayers or as a mason helper, correct?

A Before I got on steady.

Q Right, but you still worked with the bricklayers?

A Yes.

Q But in no other jobs that you did in the yard crew do you believe you had exposure to asbestos?

A No.

Q When you actually became a mason's helper, would that be a job change so that you would get a salary increase?

* * *

[p. 64] bit.

BY MR. PARRINGTON:

Q With that in mind, sir, is there anything that you testified to so far this morning that you want to add some information to or explain?

A Well, I – now, do you want to know all of the work all over in the mill?

Q I'd like to try to know most of the places, yeah. Why don't you tell me where else?

A Oh, we worked all over. We would be patching different things all throughout the mill, you know, little jobs.

Q But where? What kinds of things would you be doing? Where would you be patching brick?

A Repairing the walls.

Q Would you think that would be an asbestos product?

A No.

Q Let's limit to where you would be using a product that you thought may have asbestos. Anywhere else that we haven't talked about where you might have worked in the mill using something what might have contained asbestos?

A Might have been up on one of the boilers tore off the –

Q Doing what?

A Repairing the roof, the outside of the roof.

Q What kind of material was that roof made out of?

A It seems like – not gypsum, you know, but –

[p. 65] Q What did it look like?

A Brown. It was just like – what is that? It was some insulation, I know.

Q Would you be working on the outside of the roof?

A Yes.

Q Was it a pebble and pitch roof?

A No.

Q Was it a rubber roof?

A No.

Q What was it like? You're up there walking on it. Tell me what it looks like?

A It was covered with something else but it seemed like we pulled off some insulation, whatever it was.

Q Was it covered with something that looked like a vinyl or something?

A No.

Q Okay. What did the material that it was covered with look like? Was it smooth, rough?

A It was smooth, you know. Not – it wasn't paint or anything, vinyl.

Q Was it like an asphalt?

A No.

Q What color?

A It seems like it was light.

Q And then below that was it something that was sticky if

* * *

[p. 105] Garlock, Inc. and Lake Asbestos of Quebec. Did you ever work with any gaskets?

A Well, the digesters, they used gaskets.

Q Did you ever change any gaskets?

A I was there when they – no, I never did.

Q Did you ever pack any pumps?

A No.

Q You talked about working on a roof. Did you ever do any roofing work other than the one that you described for Mr. Parrington?

A When I was in the yard, I did. I was on the roofing crew for a while.

Q Did you work with asphalt shingles?

A Yes.

Q Do you know who manufactured those asphalt shingles?

A No.

* * *